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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

This Document Relates to:
All Cases

Case No. 3:23-md-03084-CRB

**DECLARATION OF SARAH R. LONDON
IN SUPPORT OF PLAINTIFFS’ PORTION
OF PLAINTIFFS’ MOTION FOR ENTRY
OF PRETRIAL ORDER ESTABLISHING
A COMMON BENEFIT FEE AND
EXPENSE FUND**

Judge: Honorable Charles R. Breyer

1 I, Sarah R. London, hereby declare as follows:

2 1. I am a partner of Lieff Cabraser Heimann & Bernstein, LLP, an attorney licensed
3 in the State of California and duly admitted to practice before this Court, and appointed co-lead
4 counsel in the above captioned action.

5 2. I submit this declaration in support of Plaintiffs' motion for entry of a pretrial
6 order establishing a common benefit fee and expense fund.

7 3. I have personal knowledge of the facts stated herein and, if called upon to do so,
8 could and would testify competently thereto.

9 4. Attached as **Exhibit A** is a true and correct copy of an order entered in *In re:*
10 *McKinsey & Co., Inc. Nat'l Prescrip. Opiate Consultant Litig.*, No. 21-md-2996, ECF No. 567
11 (N.D. Cal. June 30, 2023).

12 5. Attached as **Exhibit B** is a true and correct copy of an order entered in *In re: Juul*
13 *Labs, Inc. Mkt., Sales Prac., & Prods. Liab. Litig.*, No. 19-md-2913, ECF No. 586 (N.D. Cal.
14 May 27, 2020)

15 6. Attached as **Exhibit C** is a true and correct copy of an order entered in *In re Social*
16 *Media Litig.*, No. 22-md-03047, ECF No. 190 (N.D. Cal. Mar. 15, 2023) ,

17 7. I declare under penalty of perjury under the laws of the United States of America
18 that the foregoing is true and correct.

19 Executed on this 28th day of August 2024 in San Francisco, California.

20 /s/ Sarah R. London

21 Sarah R. London
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EXHIBIT A

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 IN RE: MCKINSEY & CO., INC.
12 NATIONAL PRESCRIPTION OPIATE
CONSULTANT LITIGATION

Case No. 21-md-02996-CRB (SK)

~~[CORRECTED] [PROPOSED]~~ PRETRIAL
ORDER NO. 9: ESTABLISHING A
COMMON BENEFIT FEE AND EXPENSE
FUND

13 This Order Relates to:

14 ALL ACTIONS
15

16
17 **THIS ORDER** is entered to supplement Pretrial Order No. 3 (Protocol for Common
18 Benefit Work and Expenses) entered August 18, 2021 in this litigation (“PTO-3”).¹ PTO-3
19 remains in full force and effect and is hereby supplemented as follows:

- 20 1. On August 16, 2021, this Court appointed a Plaintiffs’ leadership structure.²
21 2. On August 18, 2021, this Court entered PTO-3, which sets forth detailed
22 instructions for the performance of common benefit work, and for the type of work and expenses
23 that could qualify for potential compensation and reimbursement. Under this authority and with
24 this guidance, Plaintiffs’ Lead Counsel, the members of the Plaintiffs’ Steering Committee
25 (“PSC”), and other authorized counsel (collectively, “Participating Counsel”), have done and

26 ¹ ECF No. 215.

27 ² ECF No. 211 (Pretrial Order No. 2: Order Appointing Plaintiffs’ Lead Counsel and
28 Plaintiffs’ Steering Committee).

1 will continue to do common benefit work on a contingent basis. The PSC has invested and will
2 continue to invest substantial time and financial resources related to motion practice, discovery,
3 and bellwether trials. This work has and will benefit all Plaintiffs with claims against Defendants
4 related to the subject matter of this MDL.

5 3. It is just and appropriate to provide a system of assessment on any settlements
6 and recoveries, to which this substantial effort has contributed, commensurate with common
7 benefit assessments ordered in recent and contemporary MDLs.

8 4. The Court enters this Order: (1) to avoid unnecessary conflicts and expense,
9 conserve judicial resources, and expedite the disposition of all the cases in this complex
10 litigation; (2) to provide for the equitable sharing among Plaintiffs and their counsel of the
11 burden of services performed and expenses incurred by attorneys acting for the common benefit
12 of all Plaintiffs in this complex litigation (collectively, “Common Benefit Work”); and (3) to
13 enable Plaintiffs’ attorneys who wish to obtain the work-product of the PSC and the work-
14 product of others who perform authorized common benefit work (collectively, the “Common
15 Benefit Work Product”), an opportunity to obtain such work product.

16 5. For purposes of this and other common benefit-related Orders, the phrase
17 “common benefit” refers to Lead Counsel-authorized and timely reported work performed and
18 costs incurred on behalf of one or more of the definable groups or categories of plaintiffs with
19 cases in these proceedings, such as Subdivisions, School Districts, Tribes, Third Party Payors, or
20 NAS plaintiffs, or all plaintiffs generally.

21 **I. GOVERNING PRINCIPLES—THE COMMON BENEFIT DOCTRINE**

22 6. This Order is entered to provide for the fair and equitable sharing, among all
23 beneficiaries, of the value of the services performed and expenses incurred by attorneys acting
24 for the common benefit of all plaintiffs in this complex litigation. This is accomplished by
25 directing Defendants who have appeared in these proceedings, and over whom this Court has
26 exercised jurisdiction, in the event of settlement, verdicts, and/or other recoveries, to either hold
27 back or self-fund a designated percentage of their related settlements. The Court’s authority
28 derives from the Supreme Court’s common benefit doctrine, as established in *Trustees v.*

1 *Greenough*, 105 U.S. 527 (1881); *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116
 2 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*,
 3 396 U.S. 375 (1970); and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980).

4 7. This and many other courts have properly exercised their inherent case
 5 management authority to apply the common benefit doctrine in MDL proceedings. *See In re*
 6 *Nat'l Prescription Opiate Litig.* (MDL No. 2804) (N.D. Ohio 2022), ECF Nos. 4804, 5503; *In re*
 7 *Bard IVC Filters Prods. Liab. Litig.* (MDL No. 2641), 603 F. Supp. 822 (D. Ariz. 2022); *In re*
 8 *Social Media Adolescent Addiction/Personal Injury Products. Liab. Litig.* (MDL No. 3047)
 9 (N.D. Cal. 2022); *In re Cook Med., Inc., Pelvic Repair Sys.* (MDL No. 2440), 365 F. Supp. 3d
 10 685, 695 (S.D.W. Va. 2019) (collecting cases); *In re Zyprexa Prods. Liab. Litig.* (MDL No.
 11 1596), 467 F. Supp. 2d 256, 265–67 (E.D.N.Y. 2009); *In re Bextra/Celebrex Prods. Liab. Litig.*
 12 (MDL No. 1699), Pretrial Order No. 8A (N.D. Cal. 2008) (8% assessment); *In re Sulzer Hip*
 13 *Prosthesis & Knee Prosthesis Prods. Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003), *aff'd*,
 14 398 F.3d 778 (6th Cir. 2005); *In re MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522, 525–29 (D.
 15 Nev. 1987); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d
 16 1006, 1019–21 (5th Cir. 1977). The Third Circuit most recently endorsed this important case
 17 management tool in *Home Depot USA, Inc. v. LaFarge North America, Inc.*, 59 F.4th 55 (3d Cir.
 18 2023).

19 8. Use of the common benefit doctrine to compensate attorneys who work for the
 20 common good of all plaintiffs is necessary for MDLs to be an effective means for the timely and
 21 economic resolution of cases. Management of complex MDLs would be impossible without
 22 court-appointed counsel. *See Bard IVC Filters*, 603 F. Supp. 3d at 831. If court-appointed
 23 counsel “are to be an effective tool, the court must have the means at its disposal to order
 24 appropriate compensation for them. The court’s power is illusory if it is dependent upon [court-
 25 appointed] counsel’s performing the duties desired of them for no additional compensation.”
 26 *Everglades*, 549 F.2d at 1012. Thus, in consolidated MDL proceedings, it is standard practice to
 27 order that a percentage of all recoveries be contributed to a fund to compensate attorneys who
 28 provide work for the common benefit of all plaintiffs. *Manual for Complex Litigation (Fourth)*

§ 20.312 (2004) (“MDL judges generally issue orders directing that defendants who settle MDL-related cases contribute a fixed percentage of the settlement to a general fund to pay national counsel.”).

II. APPLICATION AND SCOPE

9. This Order applies to:

- a) All cases or claims now or later subject to the jurisdiction of this Court in this MDL, regardless of whether the case is resolved while the case is pending before this Court, after a remand from this Court to the transferor court, or in bankruptcy;³
- b) All cases or claims, filed or unfilled, in which any counsel associated with any one case filed in or transferred to this MDL has a fee interest; and,
- c) All cases or claims settled pursuant to an MDL-negotiated or supervised settlement agreement.

III. PLAINTIFFS’ FEE AND EXPENSE ACCOUNTS

10. Plaintiffs’ Lead Counsel is directed to establish two bank accounts (the “Accounts”) to receive and disperse funds consistent with this Order (the “Funds”). These Funds will be held subject to the direction of this Court. The first fund shall be designated as the “Fee Fund,” and the second should be designated as the “Expense Fund.”

A. Establishing the Fee and Expense Accounts

11. The accounting department of Plaintiffs’ Lead Counsel’s firm is directed to serve as “Administrator” to oversee the Accounts and to receive and disburse funds in the event of settlements or verdicts as provided in this Order and any subsequent Orders. The Accounts will be held subject to the direction of this Court.

³ If a case is determined to be improperly removed to this Court after the Court’s consideration of a remand motion and is remanded to the transferor court, the case will not automatically be subject to assessment just by virtue of it having been temporarily venued in this Court. However, if the case received and benefited from the work product of the MDL, it could be assessed, after due consideration by the Court following briefing by the parties.

1 **B. Administration of the Fee and Expense Accounts**

2 12. The Accounts shall be established at a commercial bank that Plaintiffs' Lead
3 Counsel shall select in consultation with the PSC. The commercial bank shall be the "Escrow
4 Agent."

5 13. No disbursement shall be made from the Accounts other than by Order of this
6 Court pursuant to a petition requesting an award of fees and reimbursement of expenses (a
7 "Petition"). No Petition shall be filed without leave of Court. No person or entity has any right to
8 make any claim against any of the amounts held in the Accounts except to the extent this Court
9 issues an Order directing the disbursement of any amounts to such a person or entity. The rights
10 of any such person or entity are limited to the amount ordered by the Court to be so disbursed to
11 that particular person or entity. Plaintiffs' Lead Counsel may, in consultation with the PSC,
12 convene a common benefit fees and costs committee, or utilize another appropriate mechanism,
13 to make recommendations to the Court for the award of common benefit fees and costs. Any and
14 all such awards require Court approval on noticed motions.

15 14. The amounts held in the Accounts shall not constitute the separate property of any
16 person or entity or be subject to garnishment or attachment for the debts of any person or entity.
17 However, any specific amounts ordered by the Court to be disbursed to a person or entity, upon
18 the entry of such an Order, can then be subject to garnishment or attachment, limited to the
19 amount of the disbursement so ordered. These limitations do not preclude a person or entity from
20 transferring, assigning, or creating a security interest in potential disbursements from the
21 Accounts to which such person or entity may be entitled as determined by the Court, if permitted
22 by applicable state laws and if subject to the conditions and contingencies of this Order.
23 However, no notice of lien or security interest in potential disbursements or of a transfer or
24 assignment of a right of potential disbursements shall be effective unless and until it is filed in
25 this Court and served upon the Administrator.

26 15. In connection with the administrative services, the Administrator shall:

- 27 a) Have all such power and authority over the Accounts as necessary or
28 convenient to exercise the authority granted in this Order;

- b) Keep and report periodically to the Court, to the extent requested by the Court, an accounting of the funds received, maintained, and disbursed relating to the Accounts;
- c) Have the authority to instruct the Escrow Agent with respect to permitted investments of the Accounts;
- d) Make decisions and take action with respect to treatment of the Accounts for purposes of compliance with the Internal Revenue Code and any applicable local or state tax codes, including creating reports, maintaining and reporting relating to the Accounts and their income, if any, derived therefrom, and as in a Qualified Settlement Fund or such other entity as the Administrator deems appropriate;
- e) Out of the assets of the Accounts, purchase and maintain reasonable amounts and types of insurance for errors and omissions or fidelity bonds;
- f) Have the authority to procure, upon consultation with the PSC, professional accounting, legal, and other services for the purposes of carrying out the tasks described in this Order, and to be reimbursed for the expenses of such services; and,
- g) Have the authority to adopt and implement reasonable procedures consistent with this Order and in consultation with the PSC.

16. Unless required by law (as with a settlement containing a class action component in which certain class members settle parallel to, but outside of, the settlement class), or as otherwise agreed to by Defendants and the PSC, details of any individual settlement agreement, individual settlement amount, and individual amounts deposited into the Accounts shall be treated as confidential by the Administrator and shall not be disclosed by the Administrator to the public, the Court, or the Court's designee, unless the Court requests that it receive that information *in camera*. The Administrator shall, however, provide statements to the Court upon its request, showing only the aggregate of the monthly deposits, disbursements, interest earned, financial institution charges, if any, and current balance.

C. Requirements of the Escrow Agent

17. The Escrow Agent shall be a commercial bank that: (1) has deposits insured by the Federal Deposit Insurance Corporation; (2) is organized under the laws of the United States or any state thereof; and (3) has a total risk-based capital in excess of \$5 billion and meets the

1 minimum risk-based ratios established under the Federal Deposit Insurance Corporation
2 Improvement Act of 1991. The Escrow Agent may act as paying agent, depository, custodian, or
3 trustee with respect to funds it holds.

4 18. The Administrator shall consider, in designating the Escrow Agent and in
5 procuring professional services, the charges that the Escrow Agent or provider of professional
6 services will impose for its actions and the ability of the Escrow Agent or provider of
7 professional services to undertake the tasks called for with efficiency and responsiveness.

8 19. The Escrow Agent shall not acquire or hold for longer than 90 days, any debt
9 securities, certificates, or investments unless such instruments are a U.S. Treasury Bill, U.S.
10 Treasury Money Market, U.S. Government Money Market, or similar type of account
11 guaranteed by the United States or an agency thereof, including an FDIC-Insured Account. The
12 U.S. Treasury Money Market or U.S. Government Money Market must be registered under the
13 Investment Company Act of 1940, as amended. In determining investments to be held by the
14 Escrow Agent, primary regard shall be given by the Escrow Agent to safety of principal.

15 20. The reasonable fees and reasonable expenses of the Administrator and Escrow
16 Agent shall be paid by the PSC. The Administrator and Escrow Agent shall each provide to the
17 PSC their statements for their reasonable fees and reasonable expenses charged on a monthly
18 basis. When this Court authorizes the filing of a Petition, the reasonable fees and expenses of the
19 Administrator and Escrow Agent that were paid by the PSC may be included as items for
20 reimbursement from the Accounts. The Petition shall include copies of the statements of the
21 Administrator and Escrow Agent that had been submitted on a monthly basis to the PSC to
22 support the request for reimbursement of such payments made by the PSC for which
23 reimbursement is requested.

24 **IV. PARTICIPATION AGREEMENT AND ELIGIBLE PARTICIPATING**
25 **COUNSEL**

26 21. Pursuant to PTO-3, the recovery of common benefit attorneys' fees and cost
27 reimbursements will be limited to "Participating Counsel," defined as Plaintiffs' Lead Counsel
28 and members of the Plaintiffs' Steering Committee (along with members and staff of their

1 respective firms), any other counsel authorized by Plaintiffs' Lead Counsel to perform work that
2 may be considered for common benefit compensation, and/or counsel who have been
3 specifically approved by this Court as Participating Counsel prior to incurring any such cost or
4 expense.

5 22. An agreement attached hereto as **Exhibit 1** (the "Participation Agreement") is
6 approved by this Court for signature by attorneys for the purposes set forth below.

7 23. The Participation Agreement can be entered into by plaintiffs' attorneys on a
8 voluntary basis. The Participation Agreement is a private and cooperative agreement between the
9 PSC and plaintiffs' attorneys only. It is not an agreement with any Defendant.

10 24. There is no need for an attorney who already has a case filed in or transferred to
11 this Court or who represents a plaintiff or claimant in any MDL proceeding to sign the
12 Participation Agreement, because they are automatically subject to PTO-3, and any amendments,
13 with regard to all cases in which they have a fee interest, regardless of whether any of their other
14 cases are filed in other jurisdictions, or not yet filed.

15 25. Plaintiffs' attorneys who do not execute the Participation Agreement and who are
16 not deemed signatories to the Participation Agreement, or are otherwise not bound to common
17 benefit assessments pursuant to PTO-3, and any amendments, are hereinafter referred to as
18 "Non-Participating Counsel."

19 26. Participating Counsel who execute the Participation Agreement shall be entitled
20 to access to the Common Benefit Work Product for use in all of the cases or claims of their
21 clients, whether the case or claim has been filed or not, and if filed, for use in any court in which
22 it was filed even if not filed in this MDL, and for use for the benefit of non-filed claims,
23 including any for which a tolling agreement exists. All claims or cases of a counsel who has
24 executed the Participation Agreement shall be assessed whether the claim or case has or had not
25 been filed, and all claims or cases in which a counsel who has executed the Participation
26 Agreement has a fee interest shall be assessed.

27 27. Non-Participating Counsel, who do not execute the Participation Agreement and
28 who are not deemed to have executed the Participation Agreement, shall have no right of access

1 to the Common Benefit Work Product. However, in the event it is determined that such counsel
2 in any fashion benefited from the Common Benefit Work Product or the administrative functions
3 of the PSC, then all cases and claims of clients of such counsel, whether filed or not, shall be
4 subject to the assessment described in this Order. It is deemed that the fair liquidated damages
5 for such unauthorized use of the Common Benefit Work Product is equal to the assessment
6 percentage(s) set by this Order. The Court will also consider an application by the PSC for
7 payment of its fees and costs to enforce this Order with respect to any unauthorized procurement
8 or use of the Common Benefit Work Product.

9 28. The PSC may periodically request that attorneys who are subject to the
10 assessment provide a list of all cases filed, regardless of jurisdiction, and a list of all claims of
11 clients represented or in which they have a fee interest whether the case is filed or not or on a
12 tolling agreement or not, to facilitate the PSC's ability to keep track of all cases and claims that
13 are subject to the assessment. Further, all counsel with cases filed in or transferred to this Court,
14 and those who sign the Participation Agreement, must comply with such a request within 30
15 days of the request.

16 **V. ASSESSMENTS AND PAYMENTS INTO THE ACCOUNTS**

17 **A. Assessment Allocation**

18 29. For Participating Counsel, the assessment shall be 7.5%. This 7.5% assessment is
19 payable from the attorneys' fee portions of the "Gross Monetary Recovery," defined below, and
20 applies, unless otherwise ordered, to all settlements reached and judgments entered in this
21 litigation, whether before or after the date of this Order.

22 30. If the 7.5% amount exceeds one-half (1/2) of Participating Counsel's total
23 contingency fee for a given client, then the contingent assessment will instead be limited to one-
24 half (1/2) of the contingency fee of Participating Counsel on each settlement or judgment. This
25 assessment and limit is equivalent to that ordered in a related contemporary MDL, *In re National*
26 *Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio), and within the range of modern
27 MDL assessments. The MDL assessments represent a hold back pursuant to *In re Zyprexa*
28 *Products Liability Litigation*, 467 F. Supp. 2d 256, 266 (2d Cir. 2006).

1 **B. Calculating the Assessment**

2 31. For any attorney subject to an assessment under the terms of this Order, the
3 assessment is owed on the “Gross Monetary Recovery” on all of that attorney’s cases or claims.

4 32. A Gross Monetary Recovery occurs when a plaintiff agrees or has agreed—for
5 monetary consideration—to settle, compromise, dismiss, or reduce the amount of a claim (a
6 “Settlement”) or, with or without trial, recover a judgment for monetary damages or other
7 monetary relief, including compensatory, and/or abatement costs and/or punitive damages (a
8 “Judgment”), with respect to any opioids-related claims against McKinsey, including any or all
9 claims alleged against McKinsey in the Master Complaints and case-specific complaints (and
10 amendments thereto) in these MDL proceedings (individual or class), including but not limited
11 to the private, public, or government-entity plaintiffs (including cities, counties, school districts,
12 Indian tribes, state attorneys general, and participating States).

13 33. The Gross Monetary Recovery:

- 14 a. Excludes court costs that are to be paid by Defendant(s); and,
15 b. Includes the present value of any fixed and certain payments to be made
16 in the future, such as those that come about as a result of a structured
17 settlement of a claim or payments for future abatement costs.

18 **C. Defendants’ Obligations**

19 34. Defendants and their counsel shall not distribute any Settlement or Judgment
20 proceeds to any counsel or plaintiff until after (1) Defendants’ counsel notifies Plaintiffs’ Lead
21 Counsel in writing of the existence of a settlement and the name of the individual plaintiff’s
22 attorney (without disclosing the amount of the settlement); (2) Plaintiffs’ Lead Counsel consults
23 with the designee, if necessary, to ascertain if the attorney or his/her/their firm is a firm subject
24 to an assessment; and (3) the PSC has advised Defendants’ counsel in writing whether or not the
25 individual plaintiff’s attorney’s cases are subject to an assessment and the amount (stated as a
26 percentage of the recovery) of the assessment pursuant to this Order. Any of the Defendants’
27 counsel shall be permitted to share this information with the PSC, who shall otherwise keep this
28 information confidential.

35. For cases subject to an assessment, Defendants are directed to withhold an assessment from any and all amounts paid to plaintiffs and their counsel and to pay the assessment directly into the Accounts as a credit against the Settlement or Judgment. No orders of dismissal of any Plaintiff's claim, subject to this Order, shall be entered unless accompanied by a certificate of Plaintiff's and Defendants' counsel that the assessment, where applicable, will be withheld and will be deposited into the Accounts at the same time the settlement proceeds are paid to settling counsel. If for any reason the assessment is not or has not been so withheld, the Plaintiff and his/her/their counsel are jointly responsible for paying the assessment into the Accounts promptly.

36. Upon payment of the assessment into the Accounts, Defendants, the PSC, and its individual members shall be released from any and all liability to any person, attorney, or claimant with respect to the assessment placed into the Accounts. Any person, attorney, or claimant allegedly aggrieved by an assessment pursuant to this Order shall seek recourse as against the Accounts only, provided, however, that notice and an opportunity to be heard shall be given to both the Defendants and the PSC.

37. This Order shall in no way be read to affect or otherwise encumber any Defendants' obligation to pay attorneys' fees and costs pursuant to fee-shifting statutes, if any, that may apply in this case.

D. Other Rights

38. Nothing in this Order is intended to impair the attorney/client relationship or any contingency fee contract deemed lawful by the attorneys' respective bar rules and/or state court nor otherwise interfere with public entities' rights to, and exercise of, control in their respective cases.

VI. COMMON BENEFIT WORK

A. Qualified Common Benefit Work Eligible for Reimbursement

39. Pursuant to PTO-3, only Participating Counsel are eligible for reimbursement for time and efforts expended for the Common Benefit. Participating Counsel shall be eligible to

1 seek reimbursement for time and efforts expended for Common Benefit Work if said time and
2 efforts are:

- 3 a. for the common benefit of Plaintiffs as defined in Paragraph 5 of this
Order;
- 4 b. timely submitted; and
- 5 c. reasonable.

6 40. All submissions and applications for common benefit fees and/or costs must
7 comply with the procedures, requirements, and guidelines of PTO-3. This Court retains the
8 discretion to amend or supplement PTO-3, and this Order, as necessary and appropriate to reflect
9 ongoing developments in the litigation.

10 41. Time spent on unauthorized work will not be compensable.

11 42. Duplicative work may not be approved for compensation.

12 43. The provisions of PTO-3, Section I(A) are incorporated herein as if set forth in
13 their entirety.

14 **B. Common Benefit Timekeeping Protocols**

15 44. The provisions of PTO-3, Section I(B) are incorporated herein as if set forth in
16 their entirety.

17 **VII. COMMON BENEFIT EXPENSES**

18 **A. Qualified Common Benefit Expenses Eligible for Reimbursement**

19 45. In order to be eligible for reimbursement, expenses (“Common Benefit
20 Expenses”) must meet the requirements set forth in PTO-3, Section I(D), which are incorporated
21 herein as if set forth in their entirety. Said expenses must be for the common benefit of Plaintiffs
22 in this MDL as a whole and must be approved by Lead Counsel prior to payment.

23 **B. Shared Costs Defined**

24 46. The provisions of PTO-3 Section I(D)(1) are incorporated herein as if set forth in
25 their entirety.

26 **C. Held Costs Defined**

27 47. The provisions of PTO-3 Section I(D)(2) are incorporated herein as if set forth in
28 their entirety.

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VIII. FURTHER PROCEEDINGS AND CONTINUING JURISDICTION

50. The intent of this Order is to establish, secure, and supervise a fund to promote the purposes and policies of the common benefit doctrine and provide a source for equitable payment of services rendered and costs incurred for the benefit of plaintiffs.

52. Any disputes or requests for relief from or modification of this Order will be decided by the Court in the exercise of its continuing jurisdiction over the parties, and authority and discretion under the common benefit doctrine.

IT IS SO ORDERED.

THE HONORABLE CHARLES R. BREYER

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**CASE MANAGEMENT ORDER 5(A)
ESTABLISHING A COMMON
BENEFIT FEE AND EXPENSE FUND**

This Document Relates to:

ALL ACTIONS

THIS ORDER is entered to supplement Case Management Order No. 5 (Common Benefit Order—Timekeeping and Expenses Protocol) entered January 13, 2020 in this litigation (“CMO-5”).¹ CMO-5 remains in full force and effect and is hereby supplemented as follows:

1. On December 20, 2019, this Court appointed a Plaintiffs’ leadership structure.²
2. On January 13, 2020, this Court entered CMO-5, which sets forth detailed instructions for the performance of common benefit work, and for the type of work and expenses that could qualify for potential compensation and reimbursement. Under this authority and with

¹ ECF Doc. No. 352.

² ECF Doc. No. 341.

1 this guidance, Plaintiffs' Co-Lead Counsel, Liaison Counsel, the members of the Plaintiffs'
2 Steering Committee (referred to as the "MDL PSC") and other authorized counsel, have done
3 and will continue to do common benefit work on a contingent basis. The MDL PSC has
4 invested and will continue to invest substantial time and financial resources related to motion
5 practice, discovery, and bellwether trials against many Defendants. This work has and will
6 benefit all Plaintiffs with claims against Defendants related to the subject matter of this MDL.

7 3. The MDL and *JUUL Labs Product Cases*, JCCP 5052 (hereinafter "JCCP")
8 (collectively referred to as "Lead Actions") are in the process of negotiating a Coordination
9 Order. Plaintiffs' Steering Committee for the MDL and Plaintiffs' Steering Committee for the
10 JCCP (collectively referred to as "PSCs") have been working cooperatively concerning
11 discovery and coordination of the Lead Actions.

12 4. The Court continues to encourage a cooperative approach by all plaintiffs in
13 federal and state court. To facilitate coordination, this Court anticipates entering a Joint
14 Coordination Order through which work product will be shared between the Lead Actions, state
15 court plaintiffs in other coordinated and independent actions, and presumably the State Attorneys
16 General for their respective cases.

17 5. On February 18, 2020, the JCCP Court appointed the Plaintiffs' Leadership
18 structure.³ Co-Lead Counsel for Individual Plaintiffs in the JCCP will seek entry of a similar
19 order ("Parallel Common Benefit Order") from Hon. Ann I. Jones. The goal of the Parallel
20 Common Benefit Order will be to enable a substantially similar system in the JCCP action
21 governing its fees, expenses, common benefit work assignments, and reporting as outlined in this
22 Order. Co-Lead Counsel from the Lead Actions agree that parallel common benefit orders will
23 facilitate cooperation and coordination between the federal and state cases.

24 6. It is just and appropriate to provide a system of assessment on any settlements
25 and recoveries, to which this substantial effort has contributed, commensurate with common
26 benefit assessments ordered in recent MDLs.

27
28 ³ *JUUL Labs Product Cases*, JCCP 5052 Case Management Order 1.1.

1 7. The Court enters this Order: (1) to avoid unnecessary conflicts and expense,
2 conserve judicial resources, and expedite the disposition of all the cases by enabling the
3 coordination of the Lead Actions and other state courts; (2) to provide for the equitable sharing
4 among Plaintiffs and their counsel of the burden of services performed and expenses incurred by
5 attorneys acting for the common benefit of all Plaintiffs in this complex litigation (collectively,
6 “Common Benefit Work”); and (3) to enable Plaintiffs’ attorneys who wish to obtain the work-
7 product of the PSCs and the work-product of others who perform authorized common benefit
8 work whether in the Lead Actions or in state court (collectively, the “Common Benefit Work
9 Product”), an opportunity to obtain such work product.

10 8. The Court is aware that the Lead Actions worked collaboratively to submit a
11 proposal regarding common benefit procedures, as well as the intent of the JCCP leadership for
12 Individual Plaintiffs to seek a Parallel Common Benefit Order, and accordingly enters the
13 provisions applicable to the MDL as set forth below.

14 **I. GOVERNING PRINCIPLES—THE COMMON BENEFIT DOCTRINE**

15 9. This Order is entered to provide for the fair and equitable sharing, among all
16 beneficiaries, of the value of the services performed and expenses incurred by attorneys acting
17 for the common benefit of all plaintiffs in this complex litigation. This is accomplished by
18 directing Defendants who have appeared in these proceedings, and over whom this Court has
19 exercised jurisdiction, in the event of settlement, verdicts, and/or other recoveries, to either hold
20 back or self-fund a designated percentage of their related settlements. The Court’s authority
21 derives from the Supreme Court’s common benefit doctrine, as established in *Trustees v.*
22 *Greenough*, 105 U.S. 527 (1881); *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116
23 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*,
24 396 U.S. 375 (1970); and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980).

25 10. Courts have properly exercised their inherent case management authority to apply
26 the common benefit doctrine in MDL proceedings. *See In re Cook Medical, Inc., Pelvic Repair*
27 *Systems*, 365 F. Supp. 3d 685, 695 (MDL No. 2440) (S.D.W.V. 2019) (collecting cases); *In re*
28 *MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522, 525-29 (D. Nev. 1987); *In re Air Crash*

1 *Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977);
 2 *In re Zyprexa Prods. Liab. Litig.* (MDL No. 1596), 467 F. Supp. 2d 256, 265-267 (E.D.N.Y.
 3 2009); *In re Sulzer Hip Prosthesis and Knee Prosthesis Prods. Liab. Litig.*, 268 F.Supp.2d 907
 4 (N.D. Ohio 2003), *affirmed*, 398 F.3d 778 (6th Cir. 2005).

5 11. Use of the common benefit doctrine to compensate attorneys who work for the
 6 common good of all plaintiffs is necessary for MDLs to be an effective means for the timely and
 7 economic resolution of cases. Management of complex MDLs would be impossible without
 8 court-appointed counsel. If court-appointed counsel “are to be an effective tool, the court must
 9 have the means at its disposal to order appropriate compensation for them. The court’s power is
 10 illusory if it is dependent upon [court-appointed] counsel’s performing the duties desired of them
 11 for no additional compensation.” *Everglades*, 549 F.2d at 1012. Thus, in consolidated MDL
 12 proceedings, it is standard to order that a percentage of all recoveries be contributed to a fund to
 13 compensate attorneys who provide work for the common benefit of all plaintiffs. *Manual for*
 14 *Complex Litigation (Fourth)* § 20.312 (2004) (“MDL judges generally issue orders directing that
 15 defendants who settle MDL-related cases contribute a fixed percentage of the settlement to a
 16 general fund to pay national counsel.”).

17 **II. APPLICATION AND SCOPE**

18 12. This Order applies to:

- 19 a) All cases or claims now or later subject to the jurisdiction of this Court in
 20 this MDL, regardless of whether the case is resolved while the case is
 21 pending before this Court, after a remand from this Court to the transferor
 court, or in bankruptcy;⁴
- 22 b) All cases or claims, filed or unfiled, in which any counsel associated with
 23 any one case filed in or transferred to this MDL has a fee interest;
- 24 c) Coordinated Actions as that term is defined in an anticipated
 25 Coordination Order, to the extent attorneys in those actions also have fee

26 ⁴ If a case is determined to be improperly removed to this Court after the Court’s consideration of a
 27 remand motion and is remanded to the transferor court, the case will not automatically be subject to
 28 assessment just by virtue of it having been temporarily venued in this Court. However, if the case
 received and benefited from the work product of the MDL, it could be assessed, after due consideration
 by the Court following briefing by the parties and with input from the Common Benefit Special Master.

interests in cases filed or transferred to this MDL, sign the Participation Agreement, or utilize the work product of this MDL;

- d) All cases or claims settled pursuant to an MDL-negotiated or supervised settlement agreement; and,
- e) All cases or claims of clients of any counsel who signed the Participation Agreement as defined herein, whether the case was filed, unfiled or tolled.

III. STATE-FEDERAL COORDINATION

A. Coordination with the Consolidated California State Court Litigation

13. Coordination on discovery and case management between the Lead Actions will be effectuated as set forth in the anticipated Coordination Orders to be entered by this Court and the JCCP Court and otherwise where practicable and appropriate, through cooperation between the leadership counsel for the MDL and the JCCP.

B. Establishing of Joint Document Depository

14. The Court understands that the PSCs have established a joint platform for hosting documents (the “Joint Document Depository”). The Joint Document Depository shall be available for the use of the plaintiffs in this MDL and the JCCP, subject to the terms set forth below, and other attorneys who sign the Participation Agreement.

IV. PLAINTIFFS’ JUUL FEE AND EXPENSES ACCOUNTS

15. The MDL Plaintiffs’ Liaison Counsel is directed to establish two bank accounts (the “Accounts”) to receive and disperse funds provided in this Order (the “Funds”). These Funds will be held subject to the direction of this Court. The first fund shall be designated as the “JUUL Fee Fund” and the second should be designated as “JUUL Expense Fund” respectively. The Court understands that JCCP Leadership for Individual Plaintiffs as set forth above will move to establish two similar JCCP accounts in the Parallel Common Benefit Order.

A. Establishing the JUUL Fee and Expense Accounts

16. The MDL Plaintiffs’ Liaison Counsel, in consultation with the MDL PSC, shall identify a Certified Public Accountant to serve as “Administrator” to be appointed by a separate Order who will be directed to oversee the Accounts and to receive and disburse funds in the

1 event of settlements or verdicts as provided in this Order and any subsequent Orders. The
2 Accounts will be held subject to the direction of this Court.

3 **B. Administration of the JUUL Fee and Expense Accounts**

4 17. The Accounts shall be established at a commercial bank that the Administrator
5 shall select in consultation with the MDL PSC. The commercial bank shall be the “Escrow
6 Agent.”

7 18. No disbursement shall be made from the Accounts other than by Order of this
8 Court pursuant to a petition requesting an award of fees and reimbursement of expenses (a
9 “Petition”). No Petition shall be filed without leave of Court. No person or entity has any right
10 to make any claim against any of the amounts held in the Accounts except to the extent this
11 Court issues an Order directing the disbursement of any amounts to such a person or entity. The
12 rights of any such person or entity are limited to the amount ordered by the Court to be so
13 disbursed to that particular person or entity.

14 19. The amounts held in the Accounts shall not constitute the separate property of any
15 person or entity or be subject to garnishment or attachment for the debts of any person or entity.
16 However, any specific amounts ordered by the Court to be disbursed to a person or entity, upon
17 the entry of such an Order, can then be subject to garnishment or attachment, limited to the
18 amount of the disbursement so ordered. These limitations do not preclude a person or entity from
19 transferring, assigning, or creating a security interest in potential disbursements from the
20 Accounts to which such person or entity may be entitled as determined by the Court, if permitted
21 by applicable state laws and if subject to the conditions and contingencies of this Order.
22 However, no notice of lien or security interest in potential disbursements or of a transfer or
23 assignment of a right of potential disbursements shall be effective unless and until it is filed in
24 this Court and served upon the Administrator.

25 20. In connection with the administrative services, the Administrator shall:

- 26 a) Have all such power and authority over the Accounts as necessary or
27 convenient to exercise the authority granted in this Order;
- 28 b) Keep and report periodically to the Court, to the extent requested by
the Court, an accounting of the funds received, maintained and

disbursed relating to the Accounts;

- c) Have the authority to instruct the Escrow Agent with respect to permitted investments of the Accounts;
- d) Make decisions and take action with respect to treatment of the Accounts for purposes of compliance with the Internal Revenue Code and any applicable local or state tax codes, including creating reports, maintaining and reporting relating to the Accounts and their income, if any, derived therefrom, and as in a Qualified Settlement Fund or such other entity as the Administrator deems appropriate;
- e) Out of the assets of the Accounts, purchase and maintain reasonable amounts and types of insurance for errors and omissions or fidelity bonds;
- f) Have the authority to procure, upon consultation with the MDL PSC, professional accounting, legal and other services for the purposes of carrying out the tasks described in this Order, and to be reimbursed for the expenses of such services; and,
- g) Have the authority to adopt and implement reasonable procedures consistent with this Order and in consultation with the MDL PSC.

21. Unless otherwise agreed to by Defendants and the MDL PSC, details of any individual settlement agreement, individual settlement amount, and individual amounts deposited into the Accounts shall be treated as confidential by the Administrator and shall not be disclosed by the Administrator to the MDL PSC, the Court, or the Court's designee, unless the Court requests that it receive that information *in camera*. The Administrator shall, however, on a quarterly basis provide statements to the MDL Co-Lead counsel and the Courts showing only the aggregate of the monthly deposits, disbursements, interest earned, financial institution charges, if any, and current balance.

C. Requirements of the Escrow Agent

22. The Escrow Agent shall be a commercial bank that: (1) has deposits insured by the Federal Deposit Insurance Corporation; (2) is organized under the laws of the United States or any state thereof; and (3) has a total risk-based capital in excess of \$5 billion and meets the minimum risk-based ratios established under the Federal Deposit Insurance Corporation

1 Improvement Act of 1991. The Escrow Agent may act as paying agent, depository, custodian or
2 trustee with respect to funds it holds.

3 23. The Administrator shall consider, in designating the Escrow Agent and in
4 procuring professional services, the charges that the Escrow Agent or provider of professional
5 services will impose for its actions and the ability of the Escrow Agent or provider of
6 professional services to undertake the tasks called for with efficiency and responsiveness.

7 24. The Escrow Agent shall not acquire or hold for longer than 90 days, any debt
8 securities, certificates or investments unless such instruments are a U.S. Treasury Bill, U.S.
9 Treasury Money Market, U.S. Government Money Market or similar type of account guaranteed
10 by the United States or an agency thereof, including an FDIC-Insured Account. The U.S.
11 Treasury Money Market or U.S. Government Money Market must be registered under the
12 Investment Company Act of 1940, as amended. In determining investments to be held by the
13 Escrow Agent, primary regard shall be given by the Escrow Agent to safety of principal.

14 25. The reasonable fees and reasonable expenses of the Administrator and Escrow
15 Agent shall be paid by the MDL PSC. The Administrator and Escrow Agent shall each provide
16 to the MDL PSC their statements for their reasonable fees and reasonable expenses charged on a
17 monthly basis. When this Court authorizes the filing of a Petition, the reasonable fees and
18 expenses of the Administrator and Escrow Agent that were paid by the MDL PSC may be
19 included as items for reimbursement from the Accounts. The Petition shall include copies of the
20 statements of the Administrator and Escrow Agent that had been submitted on a monthly basis to
21 the MDL PSC to support the request for reimbursement of such payments made by the MDL
22 PSC for which reimbursement is requested.

23 **V. APPOINTMENT OF THE SPECIAL MASTER FOR COMMON BENEFIT**
24 **REVIEW AND DISPUTE RESOLUTION**

25 26. The Lead Actions have advised the Court that they have reached an agreement
26 that Retired Judge Gail A. Andler, formerly of the Orange County Superior Court Complex
27 Department, presently with the mediation group JAMS in Irvine, California, would be an
28 appropriate special master to audit reported common benefit time and costs, and to resolve any

1 common benefit disputes that may arise between any parties authorized to submit common
2 benefit time and or expenses (the “Common Benefit Special Master”). The Court finds that
3 Judge Andler is well-qualified to perform these tasks. Accordingly, the Court appoints Judge
4 Gail A. Andler as Common Benefit Special Master to perform the necessary case time and cost
5 management functions pursuant to CMO-5, this Order, and any amendments. The Court will
6 issue a separate Order regarding this appointment pursuant to Federal Rule of Civil Procedure
7 53.

8 27. The MDL PSC, in consultation with the Common Benefit Special Master and the
9 JCCP leadership, may choose to retain a vendor to provide an electronic platform for reporting
10 of common benefit time and costs. The Common Benefit Special Master shall provide quarterly
11 reports to the MDL Co-Leads and the JCCP leadership as to her review of the common benefit
12 time and cost submissions. Within thirty days of each report being provided to the MDL Co-
13 Leads, the MDL Co-Leads shall submit a report to the Court including the Common Benefit
14 Special Master’s findings as well as any matters that the Co-Leads believe merit the Court’s
15 attention. Because of the nature of the information contained in this submission, it may be made
16 *ex parte* and will not be submitted to Defense Counsel or posted on any docket.

17 **IV. PARTICIPATION AGREEMENT AND ELIGIBLE PARTICIPATING**
18 **COUNSEL**

19 28. An agreement attached hereto as **Exhibit A** (the “Participation Agreement”) is
20 approved by this Court for signature by attorneys for the purposes set forth below.

21 29. The Participation Agreement can be entered into by plaintiffs’ attorneys on a
22 voluntary basis. The Participation Agreement is a private and cooperative agreement between the
23 MDL PSC and plaintiffs’ attorneys only. It is not an agreement with any Defendants.

24 30. There is no need for an attorney who already has a case filed in or transferred to
25 this Court to sign the Participation Agreement, because they are automatically subject to the
26 Common Benefit Orders CMO-5 and CMO-5(a), and any amendments (unless they met the
27 criteria of a remand for wrongful removal as set forth in footnote 3) with regard to all cases in
28

1 which they have a fee interest, regardless of whether any of their other cases are filed in other
2 jurisdictions, or not yet filed.

3 31. Plaintiffs' attorneys who execute the Participation Agreement are hereinafter
4 referred to as "Participating Counsel." Plaintiffs' attorneys who do not execute the Participation
5 Agreement and who are not deemed signatories to the Participation Agreement, or are otherwise
6 not bound to common benefit assessments pursuant to CMO-5 and CMO5(a), and any
7 amendments are hereinafter referred to as "Non-Participating Counsel."

8 32. All counsel for Coordinated Actions must sign the Participation Agreement in
9 order to obtain MDL Common Benefit Work Product, and if otherwise authorized, to submit for
10 common benefit time and costs.

11 33. Participating Counsel who execute the Participation Agreement shall be entitled
12 to access to the Common Benefit Work Product for use in all of the cases or claims of their
13 clients, whether the case or claim has been filed or not, and if filed, for use in any court in which
14 it was filed even if not filed in this MDL, and for use for the benefit of non-filed claims,
15 including any for which a tolling agreement exists. All claims or cases of a counsel who has
16 executed the Participation Agreement shall be assessed whether the claim or case has or had not
17 been filed, and all claims or cases in which a counsel who has executed the Participation
18 Agreement has a fee interest shall be assessed.

19 34. As detailed above, this Court understands that the JCCP leadership for Individual
20 Plaintiffs intends to seek entry of a Parallel Common Benefit Order as soon as practicable that
21 will apply to counsel with cases pending in the JCCP, including those not otherwise subject to
22 this Order. This Court also recognizes, however, that court functions at the Los Angeles
23 Superior Court are limited at this time due to the ongoing Covid-19 pandemic, and that it may be
24 some time before a Parallel order is entered. In the meantime, if attorneys from the JCCP wish
25 to access and submit time and expenses for Common Benefit Work—for example, document
26 coding in the Joint Document Depository, or engage in other cooperative work—they may do so
27 by signing the Participation Agreement, or by coordinating with the MDL PSC (and utilizing the
28 Common Benefit Special Master as necessary) to reach interim agreements.

35. Non-Participating Counsel, who do not execute the Participation Agreement and who are not deemed to have executed the Participation Agreement, or who are not subject to a Parallel common benefit order or interim agreement with the MDL PSC, shall have no right of access to the Common Benefit Work Product. However, in the event it is determined that such counsel in any fashion benefitted from the Common Benefit Work Product or the administrative functions of the PSCs, then all cases and claims of clients of such counsel, whether filed or not, shall be subject to the assessment described in this Order. It is deemed that the fair liquidated damages for such unauthorized use of the Common Benefit Work Product is equal to the assessment percentage(s) set by this Order. The Court will also consider an application by the MDL PSC for payment of its fees and costs to enforce this Order with respect to any unauthorized procurement or use of the Common Benefit Work Product.

36. The PSCs may periodically request that attorneys who are subject to the assessment provide a list of all cases filed, regardless of jurisdiction, and a list of all claims of clients represented or in which they have a fee interest whether the case is filed or not or on a tolling agreement or not, to facilitate the PSCs' ability to keep track of all cases and claims that are subject to the assessment. Further, all counsel with cases filed in or transferred to this Court, and those who sign the Participation Agreement, must comply with such a request within 30 days of the request.

VI. ASSESSMENTS AND PAYMENTS INTO THE ACCOUNTS

A. Assessment Allocation

37. Early Participating Counsel and Late Participating Counsel

a. "Early Participating Counsel" include any counsel with cases filed in a Lead Action, or any counsel who enters into the Participation Agreement within 60 days of the entry of the Order or 60 days of their first case being docketed in a Coordinated Action, or any other jurisdiction working cooperatively with the Lead Actions (whichever date is later). For Early Participating Counsel, the assessment shall be a combined seven percent 7% (5% for fees and 2% percent for costs).

b. "Late Participating Counsel" include any counsel who enters into the

1 Participation Agreement 60 days or later after the entry of this Order or 60 days or later after
2 their first case being docketed in a Coordinated Action, or any jurisdiction working
3 cooperatively with the Lead Actions (whichever date is later). For Late Participating Counsel,
4 the assessment shall be a combined 10% (8% for fees and 2% percent for costs). Exceptions
5 may be made for Public Entities and School Districts, who may require additional time and
6 process for consultation and approval from certain California public entities, and such
7 exceptions will allow for Early Participation assessment rates.

8 c. Early Participating Counsel and Late Participating Counsel together are
9 referred to as “Participating Counsel.”

10 38. The MDL and (proposed) JCCP assessments represent a hold back pursuant to *In*
11 *re Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 266 (2d. Cir. 2006), and shall not be altered
12 in any way unless each of the following occurs: (1) the PSCs are consulted and provided an
13 opportunity to be heard at a formally announced meeting prior to the filing of any motion to
14 change the assessment amount; (2) the PSCs approve the proposed change to the assessment by a
15 majority vote of each PSC; (3) a noticed motion (including notice to Defendants’ Liaison
16 Counsel) with an opportunity to be heard is granted by each Lead Action Court as to its
17 respective common benefit order, (4) all Early and Late Participating Counsel receive emailed or
18 mailed communication of such motion and (5) this Court, upon good cause shown, amends this
19 Order. The PSCs agree and understand that JCCP Co-Lead Counsel for Public Entities and
20 School Districts will be given opportunity to object in the event certain public entities do not
21 agree to this assessment or an increase in assessments.

22 **B. Calculating the Assessment**

23 39. For any attorney subject to an assessment under the terms of this Order, the
24 assessment is owed on the “Gross Monetary Recovery” on all of that attorney’s cases or claims.

25 40. A Gross Monetary Recovery occurs when a plaintiff agrees or has agreed—for
26 monetary consideration—to settle, compromise, dismiss, or reduce the amount of a claim (a
27 “Settlement”) or, with or without trial, recover a judgment for monetary damages or other
28 monetary relief, including compensatory, and/or abatement costs and/or punitive damages (a

“Judgment”), with respect to any JUUL-related claims (individual or class), including but not limited to the private, public, or government entity plaintiffs (including cities, counties, school districts, Indian tribes, state attorney generals, and participating States).

41. The Gross Monetary Recovery:

- a. Excludes court costs that are to be paid by Defendant(s); and,
- b. Includes the present value of any fixed and certain payments to be made in the future, such as those that come about as a result of a structured settlement of a claim or payments for future abatement costs.

C. Defendants’ Obligations

42. Defendants and their counsel shall not distribute any Settlement or Judgment proceeds to any counsel or plaintiff until after (1) Defendants’ counsel notifies the MDL PSC Liaison Counsel Sarah London, JCCP Co-Lead Counsel, and the Common Benefit Special Master in writing of the existence of a settlement and the name of the individual plaintiff’s attorney (without disclosing the amount of the settlement); (2) MDL PSC Liaison Counsel Sarah London consults JCCP Co-Lead Counsel if necessary to ascertain if the attorney or his/her firm is a firm subject to an assessment; and (3) the PSCs have advised Defendants’ counsel in writing whether or not the individual plaintiff’s attorney’s cases are subject to an assessment and the amount (stated as a percentage of the recovery) of the assessment pursuant to this Order. Any of the Defendants’ counsel shall be permitted to share this information with the MDL PSC Liaison Counsel and JCCP Co-Lead Counsel, who shall otherwise keep this information confidential.

43. For cases subject to an assessment, Defendants are directed to withhold an assessment from any and all amounts paid to plaintiffs and their counsel and to pay the assessment directly into the Accounts based on the allocations set forth in paragraph 37 above as a credit against the Settlement or Judgment. No orders of dismissal of any Plaintiff’s claim, subject to this Order, shall be entered unless accompanied by a certificate of Plaintiff’s and Defendants’ counsel that the assessment, where applicable, will be withheld and will be deposited into the Accounts at the same time the settlement proceeds are paid to settling counsel. If for any reason the assessment is not or has not been so withheld, the Plaintiff and

his/her/their counsel are jointly responsible for paying the assessment into the Accounts promptly.

44. Upon payment of the assessment into the Accounts, Defendants, the PSCs, and its individual members shall be released from any and all liability to any person, attorney, or claimant with respect to the assessment placed into the Accounts. Any person, attorney, or claimant allegedly aggrieved by an assessment pursuant to this Order shall seek recourse as against the Accounts only, provided however, that notice and an opportunity to be heard shall be given to both the Defendants and the PSCs.

45. This Order shall in no way be read to affect or otherwise encumber any Defendants' obligation to pay attorneys' fees and costs pursuant to fee shifting statutes, if any, that may apply in this case.

D. Other Rights

46. Nothing in this Order is intended to impair the attorney/client relationship or any contingency fee contract deemed lawful by the attorneys' respective bar rules and/or state court nor otherwise interfere with public entities' rights to, and exercise of, control in their respective cases.

VII. COMMON BENEFIT WORK

A. Qualified Common Benefit Work Eligible for Reimbursement

47. Only PSCs' counsel or their designees and Participating Counsel are eligible for reimbursement for time and efforts expended for the Common Benefit. Participating Counsel shall be eligible to seek reimbursement for time and efforts expended for Common Benefit Work, if said time and efforts are:

- a. for the common benefit;
- b. appropriately authorized;
- c. timely submitted;
- d. certified by a senior partner of the submitting firm each month attesting to the accuracy and correctness of the monthly submission; and,
- e. approved by the Common Benefit Special Master, pursuant to her designated authority as set forth in a subsequent order.

1 48. There is no guarantee that all of the time submitted by any firm will be
2 compensated and the hourly rate for the work that is compensated is not guaranteed. If counsel
3 is a member of either the MDL PSC or the JCCP PSC and fails to timely submit capital
4 contributions as may be requested by Co-Lead Counsel in that Lead Action, such counsel and
5 members of his/her firm shall not be allowed to submit common benefit time and expenses, or in
6 the discretion of the Co-Lead Counsel for the Lead Actions, a submission may be made with an
7 explanation of why the capital contributions stopped, and the PSCs with the guidance of the
8 Common Benefit Special Master and the Courts, may, after review and consultation, for good
9 cause, agree to an award that is substantially reduced.

10 49. All submissions and applications for common benefit fees and/or costs, whether
11 made by counsel performing such work in the Lead Actions or in state courts, must comply with
12 the procedures, requirements and guidelines of CMO-5, as amended, or the corresponding JCCP
13 Order. Counsel performing common benefit work in courts other than the Lead Actions, who
14 have not previously submitted their time and costs under CMO-5, shall have 45 days to do so
15 from the date that counsel signs the Participation Agreement. However, submitted time must
16 have been contemporaneously recorded, well-documented, and not reconstructed after the fact,
17 and if not pre-authorized, show good cause for the late submission. Attorneys authorized to do
18 work by Co-Lead Counsel in the Lead Actions shall submit their time to the Common Benefit
19 Special Master (with copies to their respective Co-Leads of the MDL or JCCP) in the form of
20 spreadsheets and documentation to be specified by the Common Benefit Special Master. If an
21 attorney applies for common benefit fees or costs in this Court, all of the cases in which the
22 attorney and/or his or her law firm are counsel of record are subject to the full assessment.⁵ This
23 Court retains the discretion to amend or supplement CMO-5, and this Order, as necessary and
24 appropriate to reflect ongoing developments in the litigation.

25 **B. Compensable Common Benefit Work Defined**

26 50. As the litigation progresses and Common Benefit Work Product is generated, Co-
27 Lead Counsel of the MDL will assign their Participating Counsel with Common Benefit Work as

28 ⁵ By making application for common benefit fees or costs, an attorney is automatically eligible
to access Common Benefit Work Product outlined in the Participation Agreement.

1 is necessary. In the MDL, Common Benefit Work shall include only work specifically assigned
2 by the MDL Co-Lead Counsel, and Co-Chairs of the MDL Committees with the approval of the
3 MDL Co-Lead Counsel.

4 51. The Court understands the JCCP leadership for Individual Plaintiffs intends to
5 seek entry of a Parallel Common Benefit Order for the authority to assign Common Benefit
6 Work in that proceeding, and encourages the Lead Actions to collaborate on the exercise of such
7 authority to avoid the duplication of time and effort. Disputes between the MDL and JCCP shall
8 be resolved by the Common Benefit Special Master in the first instance, and if necessary, by the
9 Courts. More details regarding the role of the Common Benefit Special Master in resolving
10 disputes will follow in a subsequent order.

11 52. Time spent on unauthorized work will not be compensable.

12 53. Duplicative work may not be approved for compensation.

13 54. The provisions of CMO-5, Section II(A) are incorporated herein as if set forth in
14 their entirety.

15 55. Common Benefit Work includes all authorized work performed for the benefit of
16 many plaintiffs in a JUUL case, including pre-trial matters, discovery, trial preparation, trial, a
17 potential settlement process, and all other work that advances this litigation to conclusion.

18 Common Benefit Work includes, but is not limited, to the following authorized activities:

19 maintenance and working in the Joint Document Depository; factual investigation and research;
20 legal research; conducting authorized discovery (e.g. reviewing, indexing, and coding
21 documents); preparation of timelines/chronologies; drafting and filing pleadings, briefs, pre-trial
22 motions and orders; preparation of deposition cuts that may be used in a case set for trial;
23 preparation of the trial exhibits; assembly of the scientific articles; approved PSC activities;
24 work of the MDL Discovery, Law and Briefing, and Science Committee Co-Chairs; other MDL
25 committee work authorized by Co-Lead Counsel; expert development authorized by the Co-
26 Chairs of the Science Committee or Co-Lead Counsel; authorized preparation for and
27 participation at state and federal court hearings; preparation for and taking of depositions of
28

Defendants and third-party witnesses, and experts; and activities associated with preparation for trial and the trial of any cases designated by the PSC.

C. Common Benefit Timekeeping Protocols

56. The provision of CMO-5, Section II(B) is incorporated herein as if set forth in their entirety.

VIII. COMMON BENEFIT EXPENSES

A. Qualified Common Benefit Expenses Eligible for Reimbursement

57. In order to be eligible for reimbursement, expenses ("Common Benefit Expenses") must meet the requirements set forth in CMO-5, Section II(C) which are incorporated herein as if set forth in their entirety. Specifically, said expenses must be:

- a. for the common benefit;
- b. appropriately authorized, as set forth in this Order, CMO-5, and the Participation Agreement;
- c. certified by a senior partner of the submitting firm each month attesting to the accuracy and correctness of the monthly submission; and,
- d. approved by the Common Benefit Special Master pursuant to her designated authority as set forth in a subsequent order.

B. Compensable Common Expenses Defined

58. Common Benefit Expenses shall include only authorized and necessary expenses specifically approved by the MDL Co-Lead Counsel, or Co-Chairs of the MDL Committees with the approval of the MDL Co-Lead Counsel. Expenses incurred by the MDL are also subject to the type and kind and limits of CMO-5. In the event of a dispute between the MDL and JCCP counsel as to an expense, it shall be submitted to the Common Benefit Special Master in the first instance, and if necessary, ultimately resolved by the Courts.

C. Common Benefit Expense Protocols

59. The provision of CMO-5 Section II(C), as amended is incorporated herein as if set forth in their entirety.

1 **IX. FURTHER PROCEEDINGS AND CONTINUING JURISDICTION**

2 60. The payment of attorneys' fees and expenses for any class action settlement or
3 recovery is governed by Federal Rule of Civil Procedure 23(h) or any analogous state court
4 procedural rules. This Order is without prejudice to such other assessments of or awards of fees
5 and costs as may be ordered by this Court under Federal Rule of Civil Procedure 23(h) or any
6 analogous state court procedural rules, the common benefit doctrine, or that may be provided by
7 contract between attorneys and clients.

8 61. The intent of this Order is to establish, secure, and supervise a fund to promote
9 the purposes and policies of the common benefit doctrine and provide a source for equitable
10 payment of services rendered and costs incurred for the benefit of plaintiffs.

11 62. If all parties to a future settlement agree that exceptional circumstances warrant a
12 departure from the holdback obligations, or other provisions of this Order, they shall submit
13 affidavits thereon and request appropriate relief from the Court.

14 63. Any disputes or requests for relief from or modification of this Order will be
15 decided by the Court in the exercise of its continuing jurisdiction over the parties, and authority
16 and discretion under the common benefit doctrine.

17
18 DATED: May 27, 2020

IT IS SO ORDERED,



HONORABLE WILLIAM H. ORRICK

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**EXHIBIT A TO CASE MANAGEMENT
ORDER 5(A) ESTABLISHING A
COMMON BENEFIT FEE AND
EXPENSE FUND**

This Document Relates to:

ALL ACTIONS

MDL 2913 COMMON BENEFIT PARTICIPATION AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20__, by and between the Plaintiffs' Steering Committee ("PSC") appointed by the United States District Court for the Northern District of California in MDL 2913 and _____ [Name of the Attorney and their Law Firm Executing the Agreement on behalf of themselves and their Law Firm] (the "Participating Counsel").

WHEREAS, the United States District Court for the Northern District of California (MDL 2913) has appointed the following to serve as members of the PSC to facilitate the conduct of pretrial proceedings in the federal actions relating to the use, marketing, and sales of JUUL ("JUUL"):

Attorney	Firm	Leadership
Sarah London	Lieff Cabraser Heimann & Bernstein LLP	Co-lead counsel/ Liaison/PSC
Dean Kawamoto	Keller Rohrbach LLP	Co-lead counsel/PSC
Dena Sharp	Girard Sharp LLP	Co-lead counsel/PSC
Ellen Relkin	Weitz & Luxenberg	Co-lead counsel/PSC
Khaldoun Baghdadi	Walkup Melodia Kelly & Schoenberger	Fed/State court liaison/PSC
Leslie LaMacchia	Pulaski Law Firm, PLLC	Fed/State court liaison/PSC
Thomas P. Cartmell	Wagstaff & Cartmell, LLP	Gov. Entity Liaison/PSC
Adam Gutride	Gutride Safier LLP	PSC
Esfand Nafisi	Migliaccio & Rathod LLP	PSC
Michelle Drake	Berger Montague PC	PSC
Joseph VanZandt	Beasley, Allen, Crow, Methvin, Portis & Miles	PSC
Erin Dickinson	Crueger Dickinson LLC	PSC
Michael Weinkowitz	Levin Sedran & Berman LLP	PSC
Rachel Abrams	Levin Simes Abrams, LLP	PSC
Emily Jeffcott	Morgan & Morgan	PSC
Matt Schultz	Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor	PSC
Kristine Kraft	Schlichter, Bogard & Denton, LLP	PSC
Jonathan Gdanski	Schlesinger Law Offices	PSC
Sabita Soneji	Tycko & Zavareei LLP	PSC
Brad Honnold	Goza & Honnold LLC	PSC
Mikal Watts	Watts Guerra LLP	PSC

WHEREAS, the PSC in association with other attorneys working for the common benefit of plaintiffs have developed and are in the process of further developing work product and a record that will be valuable in all proceedings and benefits all plaintiffs alleging injuries or damage caused by JUUL (“Common Benefit Work Product”);

WHEREAS, Participating Counsel wants to acquire the Common Benefit Work Product and establish a framework for an amicable, working relationship with the PSC for the mutual benefit of their clients, and for those attorneys who perform work authorized, audited and approved as common benefit to seek common benefit compensation;

NOW THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1 **I. SCOPE OF AGREEMENT**

2 **A. Purpose**

3 1. This Participation Agreement is a private cooperative agreement between
4 plaintiffs' attorneys to share Common Benefit Work Product with regard to all injuries and
5 damages arising from JUUL-related claims by Participating Counsel, pursuant to Case
6 Management Order No. 5(a) Establishing Common Benefit Fee and Expense Fund ("CMO-
7 5(a)" or any amendment). Plaintiffs' attorneys who execute this Participation Agreement are
8 entitled to receive the Common Benefit Work Product created by those attorneys who have
9 also executed or have been deemed to have executed the Participation Agreement.

10 2. The intent of this Participation Agreement is to establish, secure, and supervise
11 a fund to promote the purposes and policies of the common benefit doctrine and provide a
12 source for equitable payment of services rendered and costs incurred for the benefit of
13 plaintiffs.

14 3. There is no need for an attorney who already has a case filed in or transferred to
15 the MDL to sign the Participation Agreement, because they are automatically subject to the
16 Common Benefit Orders CMO-5 and CMO-5(a), and any amendments with regard to all cases
17 in which they have a fee interest, regardless of whether any of their other cases are filed in
18 other jurisdictions, or not yet filed.

19 4. For those cases that have been transferred to the MDL, but are subject to a
20 remand motion, if a case is determined to have been improperly removed to this Court after the
21 Court's consideration of the remand motion and is remanded to the transferor court, that case
22 will not automatically be subject to Common Benefit Assessment by virtue of it having been
23 temporarily venued in this Court. However, if the case received and benefited from the work
24 product of the MDL, it could be assessed, after due consideration by the Court following
25 briefing by the parties and with input from the Common Benefit Special Master.

26 5. The PSC anticipates that this Court may enter a Coordination Order that
27 contemplates work sharing between the PSC and counsel in other actions involving the same
28 subject matter as the MDL pending in other courts that agree to be bound by the same

1 Coordination Order (the “Coordinated Actions”). Plaintiffs’ attorneys with any cases filed in a
2 Coordinated Action shall, to the extent they utilize the Common Benefit Work Product, be
3 subject to and deemed to have signed this Participation Agreement for all cases they have filed
4 in any jurisdiction, and all unfiled or if applicable, tolled cases.

5 **B. Rights and Obligations of Participating Counsel**

6 6. Upon execution of this Participation Agreement, the PSC will provide access to
7 Participating Counsel the Common Benefit Work Product defined in the Court’s CMO-5 and
8 5(a), and any amendments, including access to the document depository as well as all the
9 coding and summarizing of the documents in the depository, access to all deposition transcripts
10 and summaries, deposition cuts for the purpose of trial, medical literature library, legal briefing
11 and research, and, as deemed appropriate by PSC leadership, expert witness work product.
12 Participating Counsel agree that all JUUL cases, as defined in paragraph 9 below, in which
13 Participating Counsel has a fee interest, including unfiled cases, tolled cases, and/or cases filed
14 in state and/or federal court, are subject to the terms of this Participation Agreement.

15 7. The PSC may periodically request that Participating Counsel produce a list
16 setting forth the name of each JUUL client represented by them (whether filed or unfiled) or in
17 which they have any interest in an attorneys’ fee, together with the Court and docket number
18 (if filed) of each such case. Unless otherwise specified, Participating Counsel shall provide
19 such a list within 30 days of a request to Sarah London, Lief Cabraser Heimann & Bernstein
20 LLP at JUULParticipatingCounselCaseList@lchb.com.

21 **II. AGREEMENT TO PAY AN ASSESSMENT ON GROSS RECOVERY**

22 8. Subject to the terms of this Participation Agreement and the terms of CMO-5
23 and 5(a), and any amendments, all Plaintiffs and their attorneys who either agree or have
24 agreed—for a monetary consideration—to settle, compromise, dismiss, or reduce the amount
25 of a claim or, with or without trial, recover a judgment for monetary damages or other
26 monetary relief, including such compensatory and punitive damages, with respect to JUUL-
27 related claims or cases are subject to an assessment of the gross settlement amount.

1 **A. Gross Monetary Recovery Defined**

2 9. “Gross Monetary Recovery” includes any and all amounts paid to Plaintiffs by
3 Defendants through a settlement or pursuant to a judgment. Gross Monetary Recovery (a)
4 excludes court costs that are to be paid by the defendant; and (b) includes the present value of
5 any fixed and certain payments to be made in the future. The assessment shall apply to all of
6 the claims or cases of the attorneys who are subject to CMO-5(a) that are pending in the MDL
7 or state court as well as any unfiled or if applicable, tolled claims or cases of such attorneys in
8 which they are counsel or co-counsel, or in which they have any interest.

9 **B. Assessment Amount**

10 10. **Early Participation vs. Late Participation** – For any counsel who enters into
11 the Participation Agreement within 60 days of the entry of CMO-5(a) or 60 days of their first
12 case being docketed in any Coordinated Action or jurisdiction working cooperatively with the
13 Lead Actions (MDL and JCCP) (whichever date is later), the assessment shall be a combined
14 7% as computed and determined below (“Early Participation”). For any counsel who enters
15 into the Participation Agreement after 60 days of the entry of this Order or 60 days of their first
16 case being docketed in any Coordinated Action or jurisdiction working cooperatively with the
17 Lead Actions (MDL and JCCP) (whichever date is later), the assessment shall be a combined
18 10% as computed and determined below (“Late Participation”). Exceptions may be made for
19 Public Entities and School Districts, who may require additional time and process for
20 consultation and approval from certain California public entities, and such exceptions will
21 allow for Early Participation assessment rates.

22 a. Early Participation – The assessment amount for Early
23 Participation Counsel shall be 7% (5% for common benefit
24 attorneys’ fees and 2% for costs).

25 b. Late Participation – The assessment amount for Late
26 Participation Counsel shall be 10% (8% for common
27 benefit attorneys’ fees and 2% for costs).

28 11. This assessment represents a hold back pursuant to *In re Zyprexa Prods. Liab.*

1 *Litig.*, 467 F.Supp.2d 256, 266 (2d. Cir. 2006), and shall not be altered in any way unless each
2 of the following occurs: (1) the PSCs of the MDL and JCCP are consulted and provided an
3 opportunity to be heard at a formally announced meeting prior to the filing of any motion to
4 change the assessment amount; (2) the PSCs of the MDL and JCCP approve the proposed
5 change to the assessment by a majority vote of each PSC; (3) a noticed motion (including
6 notice to Defendants' Liaison Counsel) with an opportunity to be heard is granted by each
7 Lead Action Court as to its respective common benefit order, (4) all Early and Late
8 Participating Counsel receive emailed or mailed communication of such motion and (5) this
9 Court, upon good cause shown, amends this Order. The PSCs of the MDL and JCCP agree and
10 understand that JCCP Co-Lead Counsel for Public Entities and School Districts will be given
11 opportunity to object in the event certain public entities do not agree to this assessment or an
12 increase in assessments.

13 **C. Covered Claims or Cases**

14 12. Counsel who sign (or who are deemed to have signed) this Participation
15 Agreement agree that the assessment shall apply to all unfiled claims or cases, tolled (if
16 applicable) claims or cases, and claims or cases filed in other courts in which they have any fee
17 interest. Covered claims or cases include all JUUL related claims or cases or actions brought
18 by individuals or any private, public, or government entity plaintiffs (including Cities,
19 Counties, School Districts, Indian Tribes and States).

20 **D. Attorney Fee Lien**

21 13. With respect to each client who they represent in connection with related claims
22 or cases that are filed or pending in any court, unfiled or subject to a tolling agreement,
23 consistent with CMO-5(a) establishing the common benefit JUUL Fee and JUUL Expense
24 Accounts, each Participating Counsel agrees to have Defendants deposit or cause to be
25 deposited into the JUUL Fee and JUUL Expense Accounts a percentage proportion of the
26 gross amount recovered by each such client that is equal to the assessment amount.

27 14. In the event Defendants do not deposit such funds into the JUUL Fee and
28 Expense Accounts, Plaintiff and Plaintiff's Participating Counsel are required to so inform the

MDL Plaintiffs Liaison Counsel, Sarah London and JCCP Co-Lead Counsel, and shall deposit or cause to be deposited in the JUUL Fee and JUUL Expense Accounts the percentage proportion of the gross amount recovered by each such client that is equal to the assessment amount.

15. Participating Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby grant the MDL PSC a lien upon and a security interest in any fee generated as a result of any recovery by any client who they represent in connection with any JUUL-induced injury, nuisance and marketing and sales practices, to the full extent permitted by law, in order to secure payment in accordance with the provisions of this Participation Agreement.

16. Participating Counsel will undertake all actions and execute all documents that are reasonably necessary to effectuate and perfect this lien and/or security interest.

III. COMMON BENEFIT EXPENSES

A. Qualified Expenses Eligible for Reimbursement

17. In order to be eligible for reimbursement, expenses ("Common Benefit Expenses") must meet the requirements set forth in CMO-5, Section II(C) which are incorporated herein as if set forth in their entirety. Specifically, said expenses must be:

- a. for the common benefit;
- b. appropriately authorized, as set forth in CMO-5 and CMO-5(a);
- c. certified by a senior partner of the submitting firm each month attesting to the accuracy and correctness of the monthly submission; and,
- d. approved by the Common Benefit Special Master pursuant to her designated authority as set forth in a subsequent order.

B. Expense Reporting Protocol

18. Participating Counsel must submit expenses consistent with CMO-5 and CMO-5(a) and any amendments thereto. Expenses incurred on matters common to all claimants in MDL 2913 and authorized by MDL Co-Lead Counsel, Co-Chairs of the MDL Committees with the approval of MDL Co-Lead Counsel may be submitted for reimbursement.

19. No costs spent on developing or processing individual issues in any case for an individual client will be considered or should be submitted, unless that case is an authorized bellwether trial case.

IV. COMMON BENEFIT WORK

A. Qualified Common Benefit Work Eligible for Reimbursement

20. In order to be eligible for reimbursement time and efforts expended for common benefit work must meet the requirements set forth in CMO-5 and CMO-5(a) and any amendments thereto.

21. Participating Counsel shall be eligible to seek reimbursement for time and efforts expended for Common Benefit Work, if said time and efforts are:

- a. for the common benefit;
- b. appropriately authorized;
- c. timely submitted;
- d. certified by a senior partner of the submitting firm each month attesting to the accuracy and correctness of the monthly submission; and,
- e. approved by the Common Benefit Special Master, pursuant to her designated authority as set forth in a subsequent order.

B. Authorization

22. Time spent on matters common to all claimants in MDL 2913 must be assigned by MDL Co-Lead Counsel, or the co-Chairs of the MDL Committees with the approval of MDL Co-Lead Counsel to be eligible for consideration for common benefit. No time spent on developing or processing individual issues in any case for an individual client will be considered or should be submitted, nor will time spent on unauthorized and unapproved work.

23. For examples of authorized and unauthorized work please review CMO-5 and CMO 5(a) and any amendments thereto.

1 **C. Common-Benefit Time Keeping Protocols**

2 24. As set forth in CMO-5 and CMO-5(a) and any amendments thereto, all time
3 must be accurately and contemporaneously maintained. Participating Counsel agrees to follow
4 the time-keeping protocols set forth in CMO-5 and CMO-5(a) and any amendments thereto.

5 25. Counsel performing common benefit work in courts other than the Lead
6 Actions, who have not previously submitted their time and costs under CMO-5, shall have 45
7 days to do so from the date of signing the Participation Agreement. However, submitted time
8 must have been contemporaneously recorded, well-documented, and not reconstructed after the
9 fact, and if not pre-authorized, show good cause for the late submission.

10 26. Upon order of the Court, payments may be made from the JUUL Fee and JUUL
11 Expense Accounts to Participating Counsel who provide services or incur expenses for the
12 joint and common benefit of plaintiffs. Attorneys eligible are limited to the PSC, other MDL
13 counsel called upon to assist in performing the PSC responsibilities, other Participating
14 Counsel called upon by the MDL leadership to assist in performing their responsibilities, and
15 JCCP counsel subject to a parallel common benefit order.

16 27. **No Individual Rights to the Funds.** No party or attorney has any individual
17 right to any of funds from the assessment except to the extent of amounts directed to be
18 disbursed to such person by Order of this Court. These funds will not constitute the property of
19 any party or attorney or be subject to garnishment or attachment for the debts of any party or
20 attorney except when and as directed to be disbursed as provided by court order to a specific
21 person.

22 28. **Court Approval.** The amounts deposited in the JUUL Fee and JUUL Expense
23 Accounts shall be available for distribution only to attorneys who have performed professional
24 services or incurred expenses for the common benefit. The MDL Court retains jurisdiction
25 over the common benefit award. Each Participating Counsel who does authorized common
26 benefit work has the right to present their claim(s) for compensation prior to any
27 recommendation to the Court.

1 29. **Other Fee Assessments.** This Participation Agreement is without prejudice to
2 such other assessments of or awards of fees and costs as may be ordered by any Court,
3 including under Federal Rule of Civil Procedure 23(h) or any analogous state court procedural
4 rules, the common benefit doctrine, or that may be provided by contract between attorneys and
5 clients.

6 30. **Fee Committee.** Participating Counsel understands that at a later date the Lead
7 Action Courts may appoint a Fee and Expense Committee to make recommendations on how
8 funds in the JUUL Fee and JUUL Expense Accounts should be distributed.
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AGREEMENT TO BE BOUND

Dated: _____, 20____

Firm Name:

Attorney's Name:

I hereby agree to be a **Participating Counsel** and certify that I am signing this Participation Agreement voluntarily. I also certify that I have the authority and power to bind my law firm into this Participation Agreement.

ON BEHALF OF THE PLAINTIFFS' STEERING COMMITTEE:

Dated: _____, 20__

SARAH LONDON
Plaintiffs' Liaison Counsel

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

Case No. 4:22-MD-03047-YGR

MDL No. 3047

This Document Relates to:

ALL ACTIONS

**~~[PROPOSED]~~ REVISED COMMON
BENEFIT ORDER**

In Case Management Order (“CMO”) No. 1 (ECF No. 75), the Court appointed Leadership for Plaintiffs. CMO No. 2 (ECF No. 82) governs the responsibilities and operation of Plaintiffs’ Leadership. In accordance with CMO No. 2, the Court now sets specific guidelines and rules for work done and expenses incurred for the common benefit of all Plaintiffs in this MDL. This Order also provides for the fair and equitable sharing among Plaintiffs and their counsel of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all Plaintiffs in this complex litigation. Nothing in this Order shall be interpreted to affect any proceedings other than those involving the authorities, duties, responsibilities, guidelines, and rules of and for Plaintiffs’ counsel discussed herein.

1 This Order applies to:

2 a. All cases or claims now or later subject to the jurisdiction of this Court in
3 this MDL, regardless of whether the case is resolved while the case is pending before this Court,
4 after a remand from this Court to the transferor court, or in bankruptcy;¹

5 b. All cases or claims, filed or unfiled, in which any counsel associated with
6 any one case filed in or transferred to this MDL has a fee interest;

7 c. All cases or claims settled pursuant to an MDL-negotiated or supervised
8 settlement agreement; and

9 d. All cases or claims of clients of any counsel who signs the Participation
10 Agreement as defined herein, whether the case was filed, unfiled or tolled.

11 **I. COMMON BENEFIT DOCTRINE**

12 The United States Supreme Court's common benefit doctrine was initially established in
13 *Trustees v. Greenough*, 105 U.S. 527 (1881); was refined in, *inter alia*, *Central R.R. & Banking*
14 *Co. v. Pettus*, 113 U.S. 116 (1885); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Mills v.*
15 *Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and
16 was approved and implemented in the MDL context in, *inter alia*, *In re Air Crash Disaster at*
17 *Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977); and *In re*
18 *MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522, 525-29 (D. Nev. 1987). Common Benefit Work
19 Product includes all work performed for the benefit of all claimants, including pre-trial matters,
20 discovery, trial preparation, a potential settlement process, and all other work that advances this
21 litigation to conclusion.

22 **II. ADOPTION OF CASE MANAGEMENT PROTOCOLS FOR COMMON BENEFIT**
23 **WORK**

24 The Court hereby adopts the following guidelines for the management of case-staffing,

25 _____
26 ¹ If a case is determined to be improperly removed to this Court after the Court's consideration of a
27 remand motion and is remanded to the transferor court, the case will not automatically be subject to
28 assessment just by virtue of it having been temporarily venued in this Court. However, if the case received
and benefited from the work product of the MDL, it could be assessed, after due consideration by the
Court following briefing by the parties.

1 timekeeping, cost reimbursement, and related common benefit issues. The recovery of common
2 benefit attorneys' fees and cost reimbursements will be limited to "Common-Benefit Counsel."
3 "Common-Benefit Counsel" is defined as Plaintiffs' Co-Lead Counsel, Liaison Counsel, Steering
4 Committee Leadership and Membership (along with members and staff of their respective firms),
5 and any other counsel authorized by Co-Lead Counsel to perform work that may be considered for
6 common benefit compensation.

7 Eligibility does not pre-determine payment. Common-Benefit Counsel shall be eligible to
8 receive common benefit attorneys' fees and reimbursement of costs and expenses only if the time
9 expended, costs incurred, and activity in question were (a) for the common benefit of Plaintiffs; (b)
10 timely submitted; and (c) reasonable. Common-Benefit Counsel shall agree to the terms and
11 conditions herein, including submitting to this Court's jurisdiction and agreeing that this Court has
12 plenary authority regarding the award and allocation of common benefit attorneys' fees and
13 expense reimbursements in this matter.

14 As directed in CMO No. 2, Co-Lead Counsel will be responsible for collecting monthly
15 common benefit time and expense submissions from Common-Benefit Counsel; auditing such
16 submissions, with the assistance of the Common Benefit Time and Expense Billing Manager and
17 Auditor Amy Collins, PC ("Auditor"), *see supra* § II.G, for compliance with the directives set forth
18 in this Order; informing Common-Benefit Counsel when their submissions do not comply with the
19 directives set forth in this Order; and providing quarterly summaries of attorneys' fees and costs by
20 timekeeper to the Court by email at yrpo@cand.uscourts.gov six weeks following the end each
21 quarter (e.g., May 12, 2023; August 11, 2023; November 10, 2023; etc.). Co-Lead Counsel's and
22 the Auditor's auditing responsibility notwithstanding, the ultimate determination of what is
23 compensable common benefit work, and the extent or rate at which it is compensable, is within the
24 purview of the Court.

25 If Common-Benefit Counsel are unsure if the action they are about to undertake is
26 considered Common Benefit Work, they shall ask Co-Lead Counsel in advance as to whether such
27 time may be compensable.
28

1 **A. Compensable Common Benefit Work**

2 “Common Benefit Work” includes all work done and expenses incurred that inure to the
3 common benefit of Plaintiffs in this MDL.

4 Guidelines regarding compensable and non-compensable work are set forth below.

- 5 • **Consolidated Pleadings:** (i) factual and legal research and preparation of consolidated
6 master complaint(s) and short-form complaint(s); (ii) comments and suggestions
7 regarding the consolidated master complaint(s); and (iii) presentation of argument
8 before the Court regarding common factual or legal issues.
- 9 • **Briefing:** drafting and researching (i) dispositive and non-dispositive motions and
10 responses thereto, including motions to dismiss, discovery motions, *Daubert* motions,
11 and motions for summary judgment; (ii) status conference statements; and
12 (iii) stipulations.
- 13 • **Discovery and Document Review:** Only discovery and document review authorized
14 and assigned by Co-Lead Counsel to an attorney or law firm will be considered
15 Common Benefit Work. If a firm/attorney elects to review documents that have not been
16 assigned to them by Co-Lead Counsel, that review may not be considered Common
17 Benefit Work. Descriptions associated with “document review” should contain
18 sufficient detail to allow those reviewing the time entry to generally ascertain what was
19 reviewed. For example, indicating the custodian(s), search topic(s), or number of
20 documents reviewed is the kind of description needed. Likewise, time spent reviewing
21 discovery requests and preparing responses for the benefit of counsel’s own clients is
22 not considered Common Benefit Work, unless it is at Co-Lead Counsel’s direction and
23 for a bellwether case after the case is selected as a bellwether.
- 24 • **Use of Contract Attorneys:** Contract attorneys may be used only with prior
25 authorization of and for work authorized by Co-Lead Counsel. Such authorization
26 should be included in the time submission for said attorneys. Generally this
27 authorization will be limited to first-level document review and legal research. The
28 terms of the compensation to contract attorneys engaged by Common-Benefit Counsel

(e.g., whether at actual cost or on a cost + multiplier basis) will be determined at the time of any Court approved disbursement of any recovery, if any.

- **Depositions:** Co-Lead Counsel shall exercise discretion, judgment, and prudence to designate only that number of attorneys to participate, in person or remotely as appropriate, in any given deposition that is commensurate with the nature of that deposition so as to avoid over-staffing. For attorneys not assigned to first-chair, second-chair, or defend a deposition, approval from Co-Lead Counsel should be sought beforehand, and included in the relevant time submission. Thus, for example, the deposition of a causation expert proffered by Defendants would typically justify the assignment of more attorneys than would the defense of the deposition of one of Plaintiffs' fact witnesses. Time and expenses for Common-Benefit Counsel not designated as one of the authorized questioners or otherwise authorized to attend the deposition by Co-Lead Counsel may not be considered Common Benefit Work but, rather, considered as attending on behalf of such counsel's individual clients. Unnecessary attendance by counsel may not be compensated in any fee application to the Court.
- **Bellwethers:** When authorized by Co-Lead Counsel, Common Benefit Work may include: (i) communication with clients for the purposes of identifying suitable bellwether candidates; (ii) factual and legal research necessary to select the appropriate bellwethers; and (iii) prosecution of the selected bellwether cases.
- **Periodic MDL Status Conferences:** The Court intends to hold periodic status conferences to ensure that the litigation moves forward efficiently, and that legal issues are resolved with guidance from or formal rulings by the Court. Individual attorneys are free to attend any status conference held in open court to stay up to date on the status of the litigation, but except for Co-Lead Counsel, Plaintiffs' Liaison Counsel, Plaintiffs' Steering Committee Leadership and their designees (including, to the extent authorized by Co-Lead Counsel, members of the Plaintiffs' Steering Committee Membership), attending and listening to such conferences is not compensable Common Benefit Work.

1 All attorneys have an obligation to keep themselves informed about the litigation so that
2 they can best represent their respective clients. Mere attendance at a status conference
3 will not be considered common benefit time, and expenses incurred in relation thereto
4 will not be considered common benefit expenses. The attorneys designated by Co-Lead
5 Counsel to address issues that will be raised at a given status conference or requested
6 by Co-Lead Counsel to be present at a status conference are working for the common
7 benefit, and their time will be considered for the common benefit. Similarly, any
8 attorney whose attendance at a status conference is specifically requested by the Court
9 (or by any other judge presiding over this matter or Court-appointed Special Master) to
10 address a common issue may submit his or her time and expenses for such attendance
11 for evaluation as Common Benefit Work.

- 12 • **Expert-Related Work:** If a Common-Benefit Counsel retains an expert without the
13 knowledge and approval of Co-Lead Counsel, time and expenses attributable to the
14 same may not be approved as Common Benefit Work. On the other hand,
15 communications with and retention of experts with the knowledge and approval of Co-
16 Lead Counsel will be considered common benefit time.
- 17 • **Leadership Meetings or Calls:** PSC members may submit common benefit time for
18 participation in leadership communications and meetings that are germane to all
19 members of the PSC and are necessary to fulfill their Court-appointed obligations.
20 During leadership phone calls or other meetings there is a presumption that one
21 participant per Plaintiffs' Steering Committee Membership firm, and two participants
22 per Plaintiffs' Steering Committee Leadership firm, will qualify for common benefit
23 time, . In addition, there is a presumption that additional counsel from PSC firms who
24 are tasked in writing with assignments by Co-Lead Counsel or the Co-Chairs of
25 Subcommittees may participate in Subcommittee calls relevant to those assignments.
- 26 • **Attendance at Seminars:** Except as approved by Co-Lead Counsel, attendance at
27 seminars (e.g., American Association for Justice Section Meetings, Mass Torts Made
28 Perfect, Harris Martin, and similar seminars and Continuing Legal Education programs)

1 shall not qualify as Common Benefit Work, or the expenses pertaining thereto as
2 Common Benefit Expenses.

- 3 • **Review of Court Filings and Orders:** All attorneys have an obligation to keep
4 themselves informed about the litigation so that they can best represent their respective
5 clients, and review of briefs and filings made and Orders entered in this litigation is part
6 of that obligation. Only Co-Lead Counsel, Liaison Counsel, Steering Committee
7 Leadership and those attorneys working on assignments therefrom that require them to
8 review, analyze, or summarize those filings or Orders in connection with their
9 assignments are doing so for the common benefit. All other counsel are reviewing those
10 filings and Orders for their own benefit and that of their respective clients and such
11 review will not be considered Common Benefit Work.
- 12 • **Emails and Correspondence:** Except for Co-Lead Counsel, Liaison Counsel, Steering
13 Committee Leadership, and their assigned attorneys and staff, time recorded for
14 reviewing emails and other correspondence is not compensable unless germane to a
15 specific task being performed by the receiving or sending attorney or party that is
16 directly related to that email or other correspondence and that is for the common benefit
17 of Plaintiffs. Thus, for example, review of an email or other correspondence sent to
18 dozens of attorneys to keep them informed on a matter on which they are not specifically
19 working would not be compensable as Common Benefit Work.
- 20 • **Other Non-Compensable Work:** The following types of work will not be
21 compensated: leadership organization and applications prior to the appointment of
22 leadership, time not authorized by Co-Lead Counsel, duplicative time, excessive
23 amounts of time spent on a particular task, work performed by a person more senior
24 than reasonably necessary for the task (which may not be compensated or may be
25 compensated at a reduced rate), time spent organizing case files, time spent on internal
26 firm management, and time spent preparing and reviewing time and expense
27 submissions or responding to questions concerning time and expense submissions.
28 Because all attorneys have an obligation to stay informed about the litigation so that

they can best represent their respective clients, review of emails and court filings, attendance at status conferences, participation in conference calls, and similar activities will not be considered Common Benefit Work, unless authorized in advance by Co-Lead Counsel in furtherance of a specific common benefit objective.

B. Common Benefit Timekeeping Protocols

All time must be accurately and contemporaneously maintained. Common-Benefit Counsel shall keep contemporaneous billing records of the time spent in connection with Common Benefit Work on this MDL, indicating with specificity the hours (in tenth-of-an-hour increments) and billing rate, along with a description of the particular activity (such as “conducted deposition of John Doe”). Descriptions must bear sufficient detail to identify the precise task and how it relates to Common Benefit Work. Individuals identified in time descriptions must be described by at least their first initial and last name, not by initials. “John Doe” is preferred; “J. Doe” is acceptable; and “JD” is unacceptable.

When referring to a specific plaintiff within the time description, the term “plaintiff” should be placed prior to the full name or first initial & full last name. Likewise, when referring to an expert or consultant within the time description, the term “expert” or “consultant” should be placed prior to the full name or first initial & full last name.

Each time entry must be categorized using one of the categories in Exhibit A. In general, when possible, a more specific category should be used in place of a more general category. Under no circumstances should a submitting firm make up new categories for use in its submission.

While the categories are generally self-explanatory, below are some further explanations of some of the categories that may have the potential for the most confusion.

- **Leadership Case Management Duties (1)** – This category code should only be used for work done by Court-appointed Counsel and their assigned attorneys and staff, in their capacity as Court-appointed Counsel. This category should be used primarily for Court-appointed Counsel’s more general or administrative responsibilities that do not fit into other, more specific categories. These include, but are not limited to, reviewing, analyzing, and summarizing filings and orders, and coordinating and designating non-

1 Court-appointed attorneys to conduct common-benefit tasks such as document reviews,
2 depositions, or work with experts. This category should not be used by any timekeeper
3 who is not a Court-appointed Counsel or one of their assigned attorneys or staff.

- 4 • **Administrative (3)** – This category should be used for internal filing and organizational
5 tasks, such as reviewing and downloading documents from the ECF case docket(s),
6 creating charts, reviewing filings generally, updating calendars, copying and
7 distributing documents, etc., whether done by an attorney or staff. Please remember that
8 the review of filings and orders to stay informed about the litigation is every attorney’s
9 obligation, and time spent on such tasks is not compensable as Common Benefit Work
10 for most timekeepers.
- 11 • **Research (6)** – This category should not be used if a more specific category can be used
12 instead. If research is done while writing a brief, that should be clearly indicated in the
13 time description and coded as category 5 (Pleadings/Briefs/Pre-trial Motions/Legal
14 Memoranda). Since most research will likely be done in service of a legal writing, court
15 appearance, discovery, or other specific task (and thus should be coded with the
16 appropriate category for the specific task), category 6 should be used relatively
17 infrequently.
- 18 • **Discovery (9)** – Almost all common benefit discovery-related tasks should be coded
19 with this category. The exceptions are: document review (which should be coded
20 category 8), discovery-related motions or briefs (which should be coded category 5),
21 and discovery-related court appearances (which should be category 4).
- 22 • **Document Review and Analysis (8)** – For the purposes of this category, the word
23 “document” specifically means documents or other information produced in discovery.
24 In other words, this category is not to be used for every instance of reading a
25 document—it is more specific than that. Only discovery document review specifically
26 authorized by Co-Lead Counsel and assigned to an attorney will be considered Common
27 Benefit Work. Time entry descriptions for document review tasks should include
28 specific details such as custodians, search topic(s), number of documents reviewed, or

other similar details sufficient to explain and justify the time spent.

- **Litigation Strategy & Analysis (7)** – This is a general category that should not be used if a more specific category can be used instead. Examples of work coded to this category would include internal firm strategy sessions regarding division/completion of work assigned by Co-Leads or internal correspondence regarding same.
- **Pleadings/Briefs/Pre-trial Motions/Legal Memoranda (5)** – All research and drafting time spent for a specific pleading, brief, motion, or similar legal writing should be coded in this category.
- **Trial (13)** – This category is reserved solely for tasks performed during a bellwether or other trial designated by the Co-Leads as a Common Benefit trial.
- **Miscellaneous (15)** – This is a general category that should not be used if a more specific category can be used instead. Any activities that are done in connection with or as part of a larger task like a brief, or a court appearance, or a meeting, should be categorized according to that larger task. This category should be used relatively infrequently; however, if it is used, it is critical that the description of the task be sufficiently detailed to make clear how the work was common benefit.

No time entry should contain the description of Common Benefit Work for more than one category. If on the same day the timekeeper performs two tasks that fall into two different categories, then there should be two separate entries for that timekeeper on that date, each with the appropriate category code.

C. Hourly Rates

Common-Benefit Counsel shall record their then-present hourly rates for all attorneys and staff. Counsel shall not bill a rate other than their standard rates at the time the work is performed. Use of these rates does not guarantee their payment.

D. Document Review Platform

Co-Lead Counsel has or will put out for bid any vendor services and strive to get the best services for the best price without sacrificing quality. A document review platform and analysis system will be used to avoid unnecessary expenses and procedures will be put in place to monitor

1 how much time is spent analyzing documents and to monitor the efficiency and quality of analysis
2 by other firms.

3 **E. Common Benefit Expenses Protocol**

4 **1. Shared Costs**

5 “Shared Costs” are costs that will be paid out of the Litigation Fund (“Fund”) administered
6 by Co-Lead Counsel. Each member of the Plaintiffs’ Leadership shall contribute to the Fund at
7 times and in amounts sufficient to cover Plaintiffs’ expenses for the administration of this MDL.
8 The timing and amount of each assessment will be determined by Co-Lead Counsel and each
9 assessment will be paid within 30 days as instructed by Co-Lead Counsel. Failure to pay
10 assessments will be grounds for removal from the appointments made in previous Court Orders or
11 other common benefit assignments.

12 Shared Costs are costs incurred for the common benefit of Plaintiffs in this MDL as a whole,
13 including costs for bellwethers once set for trial. All Shared Costs must be approved in writing by
14 Co-Lead Counsel prior to payment.

15 All costs that meet these requirements and fall under the following categories shall be
16 considered Shared Costs and qualify for submission and payment directly from the Fund:

- 17 • Court, filing, and service costs related to common issues;
 - 18 • Court reporter, videographer, and interpreter costs for depositions;
 - 19 • Document (both electronic and hard copy) depository creation, operation, staffing,
20 equipment, and administration;
 - 21 • Document and case analysis software used for the common benefit of a substantial
22 number of cases and approved by Co-Lead Counsel;
 - 23 • Extraordinary administration costs incurred by Plaintiffs’ Leadership (e.g., expenses for
24 equipment, technology, conference rooms, etc.), approved by Co-Lead Counsel;
 - 25 • Legal, tax, and accountant fees relating to the Fund;
- 26
27
28

- Expert witness and consultant fees and expenses for experts whose opinions and testimony would be generic and for the common benefit of a substantial number of cases. There shall be no reimbursement for case-specific experts except with the approval of Co-Lead Counsel;
- Extraordinary printing, copying, coding, and scanning costs incurred by Plaintiffs' Leadership related to the above , approved by Co-Lead Counsel;
- Research by outside third-party vendors/consultants/attorneys, approved by Co-Lead Counsel;
- Translation costs related to the above, approved by Co-Lead Counsel;
- Bank or financial institution charges relating to the Fund;
- Investigative services, approved by Co-Lead Counsel; and
- Common Benefit Time and Expense Billing Manager and Auditor invoices.

Co-Lead Counsel shall prepare and be responsible for distributing reimbursement procedures and the forms associated therewith. Shared Costs should not be included on the monthly expense report. Requests for payments from the Fund for Common Benefit expenses shall include sufficient information to permit Co-Lead Counsel and a Certified Public Accountant ("CPA") to account properly for costs and to provide adequate detail to the Court if necessary.

2. Held Costs

"Held Costs" are those that will be carried by each attorney in this MDL and reimbursed as and when Co-Lead Counsel determines to do so. Held Costs are those that do not fall into the above Shared Costs categories but are incurred for the common benefit of all Plaintiffs in this MDL, including costs of bellwethers once set for trial. Held Costs shall be recorded in accordance with the guidelines set forth herein and on the form provided as Exhibit B hereto.

Held Costs shall be subject to the following limitations:

a. Travel Limitations

Only reasonable travel expenses will be reimbursed. Except in unusual circumstances approved by Co-Lead Counsel, all travel reimbursements are subject to the following limitations:

- **Airfare:** For routine domestic flights, ordinarily only the price of a refundable,

changeable and convenient coach fare seat or its equivalent will be reimbursed. For international travel, business class, or if business class is not available, first class, is reimbursable.

- **Hotel:** Hotel room charges for the average available room rate of a reasonable business hotel will be reimbursed.
- **Meals:** Meal expenses must be reasonable. Unusually large meal expenses may be reviewed by Co-Lead Counsel and disallowed. Alcohol expenses are not reimbursable.
- **Cash Expenses:** Miscellaneous cash expenses for which receipts generally are not available (e.g., tips, luggage handling) will be reimbursed up to \$50.00 per trip, as long as the expenses are properly itemized.
- **Automobile Rental:** Automobile rentals must be reasonable for the date and location of the rental.
- **Mileage:** Mileage claims must be documented by stating origination point, destination, and total actual miles for each trip. The rate will be the maximum rate allowed by the Internal Revenue Service.

b. Non-Travel Limitations

- **Shipping, Overnight, Courier, and Delivery Charges:** All claimed Common Benefit shipping, overnight, courier, or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.
- **Postage Charges:** Common Benefit postage charges are to be reported at actual cost.
- **In-House Photocopy:** The maximum charge for Common Benefit in-house copies is \$0.20 per black and white page, and \$1.00 per color page.
- **Computerized Research- Lexis, Westlaw, or Bloomberg:** Claims for Lexis, Westlaw, Bloomberg, or other computerized legal research expenses should be in the actual amount charged to the firm and appropriately allocated for these research services.

No entry should contain more than one category of expense when practical, and no entry should have more than one expense category code assigned to it. If, on the same day, one person

1 incurs two expenses that fall into two different categories, then there should be two separate entries
2 for that person for that date, each with the appropriate expense description and category code.
3 Similarly, when practical, no listed expense entry should include expenses incurred by more than
4 one person. If multiple people incur the same expense for the same category, then generally there
5 should be a separate entry for each person, unless a single person paid the expense for multiple
6 people.

7 Every expense entry should be as detailed and specific as reasonably practical. Descriptions
8 such as “Filing and Service Fees,” “Service of Process,” “Plane Ticket,” “Investigation Fees,”
9 “Hearing Transcript,” and “Deposition Services” are not sufficient. Every entry must describe the
10 task for which the expense was incurred in enough detail to reasonably identify what the expense
11 was, who incurred it, why it was incurred, and how it related to Common Benefit Work. For
12 example: What was filed? Who was served with what document? What hearing transcript was
13 requested and for what purpose? For whom was the plane ticket purchased, for air travel from where
14 to where, for what purpose, and on what dates of travel? (The same goes for hotels, taxis, car
15 services, tips, meals, and any other travel-related expenses.) Expense entries without sufficient
16 detail may be rejected at Co-Lead Counsel’s discretion.

17 Attorneys shall provide receipts for all expenses. This does not mean that receipts are to be
18 provided “upon request”—it means each firm must provide receipts monthly along with their
19 expense submissions, in PDF form, not hard copy. Credit card receipts or sufficiently specific
20 entries on monthly statements are an appropriate form of verification. The description of unclaimed
21 expenses may be redacted.

22 **F. Protocols for Submission of Time and Expenses**

23 **1. Format**

24 For Co-Lead Counsel to maintain all time submissions in a fully sortable and searchable
25 format, all the time and expense submissions must be provided by submitting counsel in the
26 following format:

- 27 1. Counsel must use files formatted consistent with the Exhibits to this Order.
28

2. In the “Monthly Time Report” and the “Monthly Expense Report,” the person who performed each task should be identified in the column called “Last Name, First Name” by their complete last name, a comma, and their complete first name (e.g. Smith, John). Please do not use abbreviations or initials in this column.

3. In all reports, the date must be provided in month/day/year format (e.g., 12/01/2022).

2. Deadlines

All time and expense submissions must be timely submitted to Co-Lead Counsel and the Auditor by the 20th day of each month, in accordance with the guideline set forth herein, using the following email address: MDL3047Time@amylcollinspc.com. If the 20th day of the month falls on a Saturday, Sunday, or legal holiday, time and expense submissions must be submitted the next day that is not a Saturday, Sunday, or legal holiday. The first submission is due on April 20, 2023, and should include all time and expense from inception through March 31, 2023. Lead Counsel and the Auditor will determine prior to the time of allocation whether pre-MDL formation time or costs submitted warrant inclusion as common benefit work. After this first submission, each monthly submission should include all common benefit time and expenses incurred from the first to the last day of the preceding month (e.g. the submission due May 22, 2023 should contain all common benefit time and expenses incurred from April 1, 2023 through April 30, 2023).

Although counsel should endeavor to submit all common benefit expenses incurred in a certain month in the submission made on the 20th of the next month, the realities of third-party billing and credit card statement schedules may make such quick expense submission difficult in some circumstances. Thus submissions of “supplemental” common benefit expense reports will be permitted for those expenses incurred during the previous six months that—because of circumstances outside the submitting counsel’s control—could not have been submitted by the deadline. Any common benefit expenses submitted more than six months in arrears may not be considered or included in any compilation of common benefit expense calculation and may be disallowed, except for good cause shown and with approval of Co-Lead Counsel.

Supplemental submissions of common benefit time will be permitted only for good cause

1 shown and with the approval of Co-Lead Counsel.

2 **G. Auditing Time and Expense Submissions**

3 Plaintiffs' Co-Lead Counsel have retained Amy Collins, PC, to serve as Common Benefit
4 Time and Expense Billing Manager and Auditor for common benefit time and expenses submitted
5 for work performed in this MDL. The Auditor will contemporaneously review all MDL submitted
6 common benefit time and expenses for compliance with this Order and identify those entries which
7 are not compliant or otherwise appear not to be reasonable. Co-Lead Counsel shall determine if
8 time and expenses identified as potentially not compensable or reasonable should be disallowed,
9 and notify (through the Auditor or directly) the firm/person who submitted the time/expense of
10 their determination. Co-Lead Counsel will endeavor to provide such notification on a rolling basis
11 and may allow the firm/person an opportunity to correct the problem if appropriate. However,
12 nothing in this Order shall be construed to mean that time entries that are not identified by the
13 Auditor or Co-Lead Counsel as not compliant, not reasonable, or not compensable in the rolling
14 review process are thereby deemed compliant, reasonable, or compensable. The Auditor also will
15 assist Co-Lead Counsel with quarterly submissions to the Court. The Auditor shall be paid from
16 the Fund as a Shared Expense.

17 **1. Immunity**

18 The Auditor, including any person acting as assistant or consultant to the Auditor in relation
19 to her responsibility under this Order, shall enjoy the same protections from being compelled to
20 give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts
21 performing similar functions. Specifically, the Auditor and the Auditor's staff working on this
22 matter are protected by absolute quasi-judicial immunity. Co-Lead Counsel will make readily
23 available to the Auditor any and all facilities, files, database, and documents that may be necessary
24 to fulfill her functions.

25 **2. Indemnity**

26 In the event of any future settlements or verdicts resulting in the creation of a Qualified
27 Settlement Fund (QSF), the Auditor shall be indemnified and held harmless by the QSF and the
28 attorney claimants seeking payment from the QSF from any claims made by any alleged lien holder,

1 or other person or entity that attempts to assert a right of payment, reimbursement or
2 garnishment against the Fund. Should the Auditor be named as a party to, or threatened to be made
3 a party to, or named as a witness in, any threatened, pending, or completed action, suit, or
4 proceeding of any kind, whether civil, administrative, or arbitrative, and whether brought by or
5 against or otherwise involving the Fund, by reason of the Auditor having served in any capacity on
6 behalf of the Fund, the Auditor shall be indemnified and held harmless by the QSF and the attorney
7 claimants seeking payments from the QSF against reasonable expenses, costs and fees (including
8 attorneys' fees), judgment, awards, costs, amounts paid in settlement, and liabilities of all kinds
9 incurred by the Auditor in connection with or resulting from such actual or threatened action, suit
10 or proceeding; except to the extent that it is finally determined by this Court that the Auditor was
11 grossly negligent or acted with willful misconduct in connection with the administration of this
12 Fund.

13 **III. PLAINTIFFS' SOCIAL MEDIA FEE AND EXPENSE ACCOUNTS**

14 Co-Lead Counsel is directed to establish two bank accounts (the "Accounts") to receive and
15 disperse funds in the event of settlements or verdicts as provided in this Order and any subsequent
16 Orders. The first account shall be designated as the "Social Media Fee Account" and the second
17 should be designated as "Social Media Expense Account" respectively. The Accounts will be held
18 subject to the direction of this Court.

19 **A. Administration of the Social Media Fee and Expense Accounts**

20 Co-Lead Counsel shall identify a Certified Public Accountant to serve as "Administrator"
21 to be appointed by a separate Order who will be directed to oversee the Accounts. The Accounts
22 shall be established at a commercial bank that the Administrator shall select in consultation with
23 the Co-Lead Counsel. The commercial bank shall be the "Escrow Agent." No disbursement shall
24 be made from the Accounts other than by Order of this Court pursuant to a petition requesting an
25 award of fees and reimbursement of expenses (a "Petition"). No Petition shall be filed without leave
26 of Court. No person or entity has any right to make any claim against any of the amounts held in
27 the Accounts except to the extent this Court issues an Order directing the disbursement of any
28 amounts to such a person or entity. The rights of any such person or entity are limited to the amount

1 ordered by the Court to be so disbursed to that particular person or entity.

2 The amounts held in the Accounts shall not constitute the separate property of any person
3 or entity or be subject to garnishment or attachment for the debts of any person or entity. However,
4 any specific amounts ordered by the Court to be disbursed to a person or entity, upon the entry of
5 such an Order, can then be subject to garnishment or attachment, limited to the amount of the
6 disbursement so ordered. These limitations do not preclude a person or entity from transferring,
7 assigning, or creating a security interest in potential disbursements from the Accounts to which
8 such person or entity may be entitled as determined by the Court, if permitted by applicable state
9 laws and if subject to the conditions and contingencies of this Order. However, no notice of lien or
10 security interest in potential disbursements or of a transfer or assignment of a right of potential
11 disbursements shall be effective unless and until it is filed in this Court and served upon the
12 Administrator.

13 In connection with the administrative services, the Administrator shall:

14 a. Have all such power and authority over the Accounts as necessary or
15 convenient to exercise the authority granted in this Order;

16 b. Keep and report periodically to the Court, to the extent requested by the
17 Court, an accounting of the funds received, maintained and disbursed relating to the Accounts;

18 c. Have the authority to instruct the Escrow Agent with respect to permitted
19 investments of the Accounts;

20 d. Make decisions and take action with respect to treatment of the Accounts for
21 purposes of compliance with the Internal Revenue Code and any applicable local or state tax codes,
22 including creating reports, maintaining and reporting relating to the Accounts and their income, if
23 any, derived therefrom, and as in a Qualified Settlement Fund or such other entity as the
24 Administrator deems appropriate;

25 e. Out of the assets of the Accounts, purchase and maintain reasonable amounts
26 and types of insurance for errors and omissions or fidelity bonds;

1 f. Have the authority to procure, upon consultation with the Co-Lead Counsel,
2 professional accounting, legal and other services for the purposes of carrying out the tasks described
3 in this Order, and to be reimbursed for the expenses of such services; and,

4 g. Have the authority to adopt and implement reasonable procedures consistent
5 with this Order and in consultation with the Co-Lead Counsel.

6 Unless otherwise agreed to by Defendants and the Co-Lead Counsel, details of any
7 individual settlement agreement, individual settlement amount, and individual amounts deposited
8 into the Accounts shall be treated as confidential by the Administrator and shall not be disclosed
9 by the Administrator to the Co-Lead Counsel, the Court, or the Court's designee, unless the Court
10 requests that it receive that information *in camera*. The Administrator shall, however, on a quarterly
11 basis provide statements to the Co-Lead Counsel and the Courts showing only the aggregate of the
12 quarterly deposits, disbursements, interest earned, financial institution charges, if any, and current
13 balance.

14 **B. Requirements of the Escrow Agent**

15 The Escrow Agent shall be a commercial bank that: (1) has deposits insured by the Federal
16 Deposit Insurance Corporation; (2) is organized under the laws of the United States or any state
17 thereof; and (3) has a total risk-based capital in excess of \$5 billion and meets the minimum risk-
18 based ratios established under the Federal Deposit Insurance Corporation Improvement Act of
19 1991. The Escrow Agent may act as paying agent, depository, custodian or trustee with respect to
20 funds it holds.

21 The Administrator shall consider, in designating the Escrow Agent and in procuring
22 professional services, the charges that the Escrow Agent or provider of professional services will
23 impose for its actions and the ability of the Escrow Agent or provider of professional services to
24 undertake the tasks called for with efficiency and responsiveness.

25 The Escrow Agent shall not acquire or hold for longer than 90 days, any debt securities,
26 certificates or investments unless such instruments are a U.S. Treasury Bill, U.S. Treasury Money
27 Market, U.S. Government Money Market or similar type of account guaranteed by the United States
28 or an agency thereof, including an FDIC-Insured Account. The U.S. Treasury Money Market or

1 U.S. Government Money Market must be registered under the Investment Company Act of 1940,
2 as amended. In determining investments to be held by the Escrow Agent, primary regard shall be
3 given by the Escrow Agent to safety of principal.

4 The reasonable fees and reasonable expenses of the Administrator and Escrow Agent shall
5 be paid by the Co-Lead Counsel. The Administrator and Escrow Agent shall each provide to Co-
6 Lead Counsel their statements for their reasonable fees and reasonable expenses charged on a
7 monthly basis. When this Court authorizes the filing of a Petition, the reasonable fees and expenses
8 of the Administrator and Escrow Agent that were paid by Co-Lead Counsel may be included as
9 items for reimbursement from the Accounts. The Petition shall include copies of the statements of
10 the Administrator and Escrow Agent that had been submitted on a monthly basis to Co-Lead
11 Counsel to support the request for reimbursement of such payments made by Co-Lead Counsel for
12 which reimbursement is requested.

13 **IV. PARTICIPATION AGREEMENT AND ELIGIBLE PARTICIPATING COUNSEL**

14 An agreement attached hereto as Exhibit C (the “Participation Agreement”) is approved by
15 this Court for signature by attorneys for the purposes set forth below. The Participation Agreement
16 can be entered into by plaintiffs’ attorneys on a voluntary basis. The Participation Agreement is a
17 private and cooperative agreement between Co-Lead Counsel and plaintiffs’ attorneys only. It is
18 not an agreement with any Defendants.

19 There is no need for an attorney who already has a case filed in or transferred to this Court
20 to sign the Participation Agreement, because they are automatically subject to this Order with
21 regard to all cases and any amendments (unless they met the criteria of a remand for wrongful
22 removal as set forth in footnote 1) in which they have a fee interest, regardless of whether any of
23 their other cases are filed in other jurisdictions, or not yet filed.

24 Plaintiffs’ attorneys who execute the Participation Agreement are hereinafter referred to as
25 “Participating Counsel.” Plaintiffs’ attorneys who do not execute the Participation Agreement and
26 who are not deemed signatories to the Participation Agreement, or are otherwise not bound to
27 common benefit assessments pursuant this Order and any amendments are hereinafter referred to
28 as “Non-Participating Counsel.”

1 Participating Counsel who execute the Participation Agreement shall be entitled access to
2 the Common Benefit Work Product for use in all of the cases or claims of their clients, whether the
3 case or claim has been filed or not, and if filed, for use in any court in which it was filed even if not
4 filed in this MDL, and for use for the benefit of non-filed claims, including any for which a tolling
5 agreement exists. All claims or cases of a counsel who has executed the Participation Agreement
6 shall be assessed whether the claim or case has or has not been filed, and all claims or cases in
7 which a counsel who has executed the Participation Agreement has a fee interest shall be assessed.

8 Non-Participating Counsel who do not execute the Participation Agreement and who are
9 not deemed to have executed the Participation Agreement shall have no right of access to the
10 Common Benefit Work Product. However, in the event it is determined that such counsel in any
11 fashion benefitted from the Common Benefit Work Product or the administrative functions of the
12 Plaintiffs' Leadership, then all cases and claims of clients of such counsel, whether filed or not,
13 shall be subject to the assessment described in this Order. It is deemed that the fair liquidated
14 damages for such unauthorized use of the Common Benefit Work Product is equal to the assessment
15 percentage(s) set by this Order. The Court will also consider an application by the Co-Lead Counsel
16 for payment of its fees and costs to enforce this Order with respect to any unauthorized procurement
17 or use of the Common Benefit Work Product.

18 Co-Lead Counsel may periodically request that attorneys who are subject to the assessment
19 provide a list of all cases filed, regardless of jurisdiction, and a list of all claims of clients
20 represented or in which they have a fee interest whether the case is filed or not or on a tolling
21 agreement or not, to facilitate the Co-Lead Counsels' ability to keep track of all cases and claims
22 that are subject to the assessment. Further, all counsel with cases filed in or transferred to this Court,
23 and those who sign the Participation Agreement, must comply with such a request within 30 days
24 of the request.

25 **V. ASSESSMENTS AND PAYMENTS INTO THE ACCOUNTS**

26 **A. Assessment Allocation**

27 For Participating Counsel, the assessment shall be a combined 10% for fees and costs, with
28 the appropriate division between fees and costs to be proposed by Co-Lead Counsel and approved

1 by the Court prior to any disbursement from the Accounts. The portion of the 10% allocated to fees
2 shall be paid entirely out of attorney's fees. The MDL assessment represents a hold back pursuant
3 to *In re Zyprexa Prods. Liab. Litig.*, 467 F. Supp. 2d 256, 266 (2d. Cir. 2006). The Co-Leads may
4 adjust the 10% up or down as appropriate, subject to Court approval.

5 **B. Calculating the Assessment**

6 For any attorney subject to an assessment under the terms of this Order, the assessment is
7 owed on the "Gross Monetary Recovery" on all of that attorney's cases or claims. A Gross
8 Monetary Recovery occurs when a plaintiff agrees or has agreed—for monetary consideration—to
9 settle, compromise, dismiss, or reduce the amount of a claim (a "Settlement") or, with or without
10 trial, recover a judgment for monetary damages or other monetary relief, including compensatory
11 damages and/or abatement costs and/or punitive damages (a "Judgment"), with respect to any
12 Social Media-related claims. The Gross Monetary Recovery excludes court costs that are to be paid
13 by Defendant(s) and includes the present value of any fixed and certain payments to be made in the
14 future, such as those that come about as a result of a structured settlement of a claim.

15 **C. Defendants' Obligations**

16 Defendants and their counsel shall not distribute any Settlement or Judgment proceeds to
17 any counsel or plaintiff until after (1) Defendants' counsel notifies Co-Lead Counsel in writing of
18 the existence of a settlement and the name of the individual plaintiff's attorney (without disclosing
19 the amount of the settlement); and (2) Co-Lead Counsel have advised Defendants' counsel in
20 writing whether or not the individual plaintiff's attorney's cases are subject to an assessment
21 pursuant to this Order.

22 For cases subject to an assessment, Defendants are directed to withhold an assessment from
23 any and all amounts paid to plaintiffs and their counsel and to confidentially pay the assessment
24 directly into the Accounts based on the allocations set forth in Section V.A above as a credit against
25 the Settlement or Judgment. Counsel for each Defendant must provide quarterly notice to the
26 Administrator, who will share the notice with Co-Lead Counsel, of the names and docket numbers
27 of the cases for which it has paid an assessment into the Funds since the last such report. A report
28 is not due if there are no payments made into the Funds by that Defendant during that quarter.

1 Details of any individual settlement agreement, individual settlement amount and individual
2 amounts deposited into escrow will be confidential and must not be disclosed by the Administrator
3 to anyone, except to the Court upon its request. Quarterly statements from the Administrator,
4 however, will be provided to Co-Lead Counsel, and to the Court if it so requests, showing only the
5 aggregate of the quarterly deposits, disbursements, interest earned, financial institution charges, if
6 any, and current balance.

7 This Order shall in no way be read to affect or otherwise encumber any Defendants'
8 obligation to pay attorneys' fees and costs pursuant to fee shifting statutes, if any, that may apply
9 in this case.

10 **D. Other Rights**

11 Nothing in this Order is intended to impair the attorney/client relationship or any
12 contingency fee contract deemed lawful by the attorneys' respective bar rules and/or state court.

13 **IT IS SO ORDERED.**

14 Dated: March 15, 2023

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16 YVONNE GONZALEZ ROGERS
17 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

SOCIAL MEDIA MDL
MONTHLY TIME REPORT

Firm Name: _____
Date: _____

Categories: 1. Leadership Case Management Duties 2. Leadership calls/meetings 3. Admin 4. Court appearances 5. Pleadings/Briefing 6. Research 7. Litigation strategy 8. Doc review & analysis 9. Discovery 10. Experts 11. Settlement 12. Trial prep 13. Trial 14. Appeal 15. Miscellaneous								
Last Name, First Name	Professional Level: Partner (PT), Associate (A), Contract (C), Of Counsel (OC), or Paralegal (PR)	Date of Service	Category Code	Detailed Description of Work Performed	Co-Lead Counsel Who Assigned Or Approved Work	Billing Rate	Time Spent (by 0.1 increments)	Fees Total

EXHIBIT B

SOCIAL MEDIA MDL

MONTHLY EXPENSE REPORT

Firm Name: _____

Date: _____

Categories: 1. Assessment Fees 2. Federal Express / Local Courier, etc. 3. Postage Charges 4. In-House Photocopying 5. Outside Photocopying 6. Hotels 7. Meals 8. Mileage 9. Air Travel 10. Deposition Costs 11. Lexis/Westlaw 12. Court Fees 13. Witness / Expert Fees 14. Investigation Fees / Service Fees 15. Transcripts 16. Ground Transportation (i.e. Rental, Taxis, etc.) 17. Miscellaneous (Describe)						
Last Name, First Name	Date	Category Code	Detailed Description	Co-Lead Counsel Who Assigned Or Approved Work	Amount	Receipt Provided: Yes/No (if no, provide reason)

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

Case No. 4:22-MD-03047-YGR

MDL No. 3047

This Document Relates to:

ALL ACTIONS

COMMON BENEFIT ORDER, EXHIBIT C

MDL 3047 COMMON BENEFIT PARTICIPATION AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20__, by and between Co-Lead Counsel appointed by the United States District Court for the Northern District of California in MDL 3047 and _____ [Name of the Attorney and their Law Firm Executing the Agreement on behalf of themselves and their Law Firm] (the “Participating Counsel”).

WHEREAS, the United States District Court for the Northern District of California (MDL 3047) has appointed the following to as Leadership for Plaintiffs to facilitate the conduct of pretrial proceedings in this MDL:

Attorney	Firm	Leadership
Lexi Hazam	Lieff Cabraser Heimann & Bernstein LLP	Co-lead counsel
Christopher Seeger	Seeger Weiss	Co-lead counsel
Previn Warren	Motley Rice	Co-lead counsel
Jennie Anderson	Andrus Anderson	Liaison counsel
Joseph VanZandt	Beasley Allen	PSC Leadership
Alexandra Walsh	Walsh Law	PSC Leadership
Mike Weinkowitz	Levin, Sedran & Berman	PSC Leadership
Emily Jeffcott	Morgan & Morgan	PSC Leadership
Andre Mura	Gibbs Law Group	PSC Leadership
Jayne Conroy	Simmons Hanley Conroy	PSC Leadership
Matthew Bergman	Social Media Victims Law Center PLL	PSC Leadership
Ron Austin	Ron Austin Law LLC	PSC
James Bilsborrow	Weitz and Luxenberg	PSC
Paige Boldt	Watts Guerra	PSC
Carrie Goldberg	C.A. Goldberg	PSC
Sin-Ting Mary Liu	Aylstock Witkin Kreis & Overholtz	PSC
Emmie Paulos	Levin Papantonio Rafferty	PSC
Roland Tellis	Baron Budd, P.C.	PSC
Diandra “Fu” Debrosse Zimmermann	DiCello Levitt Gutzler	PSC
James Marsh	Marsh Law Firm	PSC
Hillary Nappi	Hach Rose Schirripa & Ch	PSC
Ruth Rizkalla	The Carlson Law Firm	PSC

WHEREAS, Leadership for Plaintiffs in association with other attorneys working for the common benefit of plaintiffs have developed and are in the process of further developing work product and a record that will be valuable in all proceedings and benefits all plaintiffs alleging injuries or damage caused by Defendants (“Common Benefit Work Product”);

WHEREAS, Participating Counsel wants to acquire the Common Benefit Work Product and establish a framework for an amicable, working relationship with Leadership for Plaintiffs for the mutual benefit of their clients, and for those attorneys who perform work authorized, audited and approved as common benefit to seek common benefit compensation;

NOW THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1 **I. SCOPE OF AGREEMENT**

2 **A. Purpose**

3 1. This Participation Agreement is a private cooperative agreement between
4 plaintiffs' attorneys to share Common Benefit Work Product with regard to all injuries and
5 damages arising from Social Media Adolescent Addiction/Personal Injury-related claims by
6 Participating Counsel, pursuant to the Court's Common Benefit Order. Plaintiffs' attorneys
7 who execute this Participation Agreement are entitled to receive the Common Benefit Work
8 Product created by those attorneys who have also executed or have been deemed to have
9 executed the Participation Agreement.

10 2. The intent of this Participation Agreement is to establish, secure, and supervise
11 a fund to promote the purposes and policies of the common benefit doctrine and provide a
12 source for equitable payment of services rendered and costs incurred for the benefit of
13 plaintiffs.

14 3. There is no need for an attorney who already has a case filed in or transferred to
15 the MDL to sign the Participation Agreement, because they are automatically subject to the
16 Common Benefit Order, and any amendments with regard to all cases in which they have a fee
17 interest, regardless of whether any of their other cases are filed in other jurisdictions, or not yet
18 filed.

19 4. For those cases that have been transferred to the MDL, but are subject to a
20 remand motion, if a case is determined to have been improperly removed to this Court after the
21 Court's consideration of the remand motion and is remanded to the transferor court, that case
22 will not automatically be subject to Common Benefit Assessment by virtue of it having been
23 temporarily venued in this Court. However, if the case received and benefited from the work
24 product of the MDL, it could be assessed, after due consideration by the Court following
25 briefing by the parties.

26 **B. Rights and Obligations of Participating Counsel**

27 5. Upon execution of this Participation Agreement, Co-Lead Counsel will provide
28 access to Participating Counsel the Common Benefit Work Product defined in the Court's

1 Common Benefit Order, and any amendments, including access to the document depository as
2 well as all the coding and summarizing of the documents in the depository, access to all
3 deposition transcripts and summaries, deposition cuts for the purpose of trial, medical literature
4 library, legal briefing and research, and, as deemed appropriate by Co-Lead Counsel, expert
5 witness work product. Participating Counsel agree that all Social Media Adolescent
6 Addiction/Personal Injury cases, as defined in paragraph 11 below, in which Participating
7 Counsel has a fee interest, including unfiled cases, tolled cases, and/or cases filed in state
8 and/or federal court, are subject to the terms of this Participation Agreement.

9 6. Co-Lead Counsel may periodically request that Participating Counsel produce a
10 list setting forth the name of each Social Media Adolescent Addiction/Personal Injury client
11 represented by them (whether filed or unfiled) or in which they have any interest in an
12 attorneys' fee, together with the Court and docket number (if filed) of each such case. Unless
13 otherwise specified, Participating Counsel shall provide such a list within 30 days of a request
14 to Co-Lead Counsel Lexi Hazam at lhazam@lchb.com, Christopher Seeger at
15 CSeeger@seegerweiss.com, and Previn Warren at pwarren@motleyrice.com.

16 **II. AGREEMENT TO PAY AN ASSESSMENT ON GROSS RECOVERY**

17 7. Subject to the terms of this Participation Agreement and the terms of the
18 Common Benefit Order, and any amendments, all Plaintiffs and their attorneys who either
19 agree or have agreed—for a monetary consideration—to settle, compromise, dismiss, or reduce
20 the amount of a claim or, with or without trial, recover a judgment for monetary damages or
21 other monetary relief, including such compensatory and punitive damages, with respect to
22 Social Media Adolescent Addiction/Personal Injury-related claims or cases are subject to an
23 assessment of the gross settlement amount..

24 **A. Gross Monetary Recovery Defined**

25 8. "Gross Monetary Recovery" includes any and all amounts paid to Plaintiffs by
26 Defendants through a settlement or pursuant to a judgment. Gross Monetary Recovery
27 (a) excludes court costs that are to be paid by the defendant; and (b) includes the present value
28 of any fixed and certain payments to be made in the future. The assessment shall apply to all

1 of the claims or cases of the attorneys who are subject to the Common Benefit Order that are
2 pending in the MDL or state court as well as any unfiled or if applicable, tolled claims or cases
3 of such attorneys in which they are counsel or co-counsel, or in which they have any interest.

4 **B. Assessment Amount**

5 9. For Participating Counsel, the assessment shall be a combined 10% for fees and
6 costs, with the appropriate division between fees and costs to be proposed by Co-Lead Counsel
7 and approved by the Court prior to any disbursement from the Accounts. Co-Lead Counsel
8 may adjust this percentage up or down with approval of the Court.

9 10. This assessment represents a hold back pursuant to *In re Zyprexa Prods. Liab.*
10 *Litig.*, 467 F.Supp.2d 256, 266 (2d. Cir. 2006).

11 **C. Covered Claims or Cases**

12 11. Counsel who sign (or who are deemed to have signed) this Participation
13 Agreement agree that the assessment shall apply to all unfiled claims or cases, tolled (if
14 applicable) claims or cases, and claims or cases filed in other courts in which they have any fee
15 interest. Covered claims or cases include all Social Media Adolescent Addiction/Personal
16 Injury-related claims or cases or actions.

17 **D. Attorney Fee Lien**

18 12. With respect to each client who they represent in connection with related claims
19 or cases that are filed or pending in any court, unfiled or subject to a tolling agreement,
20 consistent with the Common Benefit Order establishing the common benefit Social Media Fee
21 and Social Media Expense Accounts, each Participating Counsel agrees to have Defendants
22 deposit or cause to be deposited into the Social Media Fee and Social Media Expense
23 Accounts a percentage proportion of the gross amount recovered by each such client that is
24 equal to the assessment amount.

25 13. In the event Defendants do not deposit such funds into the Social Media Fee
26 and Social Media Expense Accounts, Plaintiff and Plaintiff's Participating Counsel are
27 required to so inform the Co-Lead Counsel, and shall deposit or cause to be deposited in the
28

1 Social Media Fee and Social Media Expense Accounts the percentage proportion of the gross
2 amount recovered by each such client that is equal to the assessment amount.

3 14. Participating Counsel, on behalf of themselves, their affiliated counsel, and
4 their clients, hereby grant the Co-Lead Counsel a lien upon and a security interest in any fee
5 generated as a result of any recovery by any client who they represent in connection with any
6 Social Media Adolescent Addiction/Personal Injury claims to the full extent permitted by law,
7 in order to secure payment in accordance with the provisions of this Participation Agreement.

8 15. Participating Counsel will undertake all actions and execute all documents that
9 are reasonably necessary to effectuate and perfect this lien and/or security interest.

10 **III. COMMON BENEFIT EXPENSES**

11 **A. Qualified Expenses Eligible for Reimbursement**

12 16. In order to be eligible for reimbursement, expenses ("Common Benefit
13 Expenses") must meet the requirements set forth in the Common Benefit Order, Section II.E,
14 which are incorporated herein as if set forth in their entirety. Specifically, said expenses must
15 be:

- 16 a. for the common benefit;
- 17 b. appropriately authorized, as set forth in the Common Benefit Order and
18 the Participation Agreement;
- 19 c. certified by a senior partner of the submitting firm each month attesting
20 to the accuracy and correctness of the monthly submission; and,
- 21 d. approved by the Common Benefit Time and Expense Billing Manager
22 and Auditor pursuant to her designated authority as set forth in the
23 Common Benefit Order.

24 **B. Expense Reporting Protocol**

25 17. Participating Counsel must submit expenses consistent with the Common
26 Benefit Order and any amendments thereto. Expenses incurred on matters common to all
27 claimants in MDL 3047 and authorized by Co-Lead Counsel may be submitted for
28 reimbursement.

1 18. No costs spent on developing or processing individual issues in any case for an
2 individual client will be considered or should be submitted, unless that case is an authorized
3 bellwether trial case set for trial.

4 **IV. COMMON BENEFIT WORK**

5 **A. Qualified Common Benefit Work Eligible for Reimbursement**

6 19. In order to be eligible for reimbursement time and efforts expended for common
7 benefit work must meet the requirements set forth in the Common Benefit Order and any
8 amendments thereto.

9 20. Participating Counsel shall be eligible to seek reimbursement for time and efforts
10 expended for Common Benefit Work, if said time and efforts are:

- 11 a. for the common benefit;
- 12 b. appropriately authorized;
- 13 c. timely submitted;
- 14 d. certified by a senior partner of the submitting firm each month attesting
15 to the accuracy and correctness of the monthly submission; and,
- 16 e. approved by the Common Benefit Time and Expense Billing Manager
17 and Auditor, pursuant to her designated authority as set forth in the
18 Common Benefit Order.

19 **B. Authorization**

20 21. Time spent on matters common to all claimants in MDL 3047 must be assigned
21 by Co-Lead Counsel to be eligible for consideration for common benefit. No time spent on
22 developing or processing individual issues in any case for an individual client will be
23 considered or should be submitted, nor will time spent on unauthorized and unapproved work.

24 22. For examples of authorized and unauthorized work please review the Common
25 Benefit Order and any amendments thereto.

1 **C. Common-Benefit Time Keeping Protocols**

2 23. As set forth in the Common Benefit Order and any amendments thereto, all time
3 must be accurately and contemporaneously maintained. Participating Counsel agree to follow
4 the time-keeping protocols set forth in Common Benefit Order and any amendments thereto.

5 24. Upon order of the Court, payments may be made from the Social Media Fee
6 and Social Media Expense Accounts to Participating Counsel who provide services or incur
7 expenses for the joint and common benefit of plaintiffs. Attorneys eligible are limited to
8 Plaintiffs' Co-Lead Counsel, Liaison Counsel, Steering Committee Leadership and
9 Membership, other MDL counsel called upon to assist in performing the Plaintiffs'
10 Leadership's responsibilities, and other Participating Counsel called upon by the Plaintiffs'
11 Leadership to assist in performing their responsibilities.

12 25. **No Individual Rights to the Funds.** No party or attorney has any individual
13 right to any of funds from the assessment except to the extent of amounts directed to be
14 disbursed to such person by Order of this Court. These funds will not constitute the property of
15 any party or attorney or be subject to garnishment or attachment for the debts of any party or
16 attorney except when and as directed to be disbursed as provided by court order to a specific
17 person.

18 26. **Court Approval.** The amounts deposited in the Social Media Fee and Social
19 Media Expense Accounts shall be available for distribution only to attorneys who have
20 performed professional services or incurred expenses for the common benefit. The MDL Court
21 retains jurisdiction over the common benefit award. Each Participating Counsel who does
22 authorized common benefit work has the right to present their claim(s) for compensation prior
23 to any recommendation to the Court.

24 27. **Other Fee Assessments.** This Participation Agreement is without prejudice to
25 such other assessments of or awards of fees and costs as may be ordered by any Court,
26 including under Federal Rule of Civil Procedure 23(h) or any analogous state court procedural
27 rules, the common benefit doctrine, or that may be provided by contract between attorneys and
28 clients.

28. **Fee Committee**. Participating Counsel understands that at a later date the Common Benefit Time and Expense Billing Manager and Auditor, and/or a Fee and Expense Committee appointed by the Court, may make recommendations to the MDL Court on how funds in the Social Media Fee and Social Media Expense Accounts should be distributed.

AGREEMENT TO BE BOUND

Dated: _____, 20__

Firm Name:

Attorney's Name:

I hereby agree to be a **Participating Counsel** and certify that I am signing this Participation Agreement voluntarily. I also certify that I have the authority and power to bind my law firm into this Participation Agreement.

ON BEHALF OF THE PLAINTIFFS' CO-LEAD COUNSEL:

Dated: _____, 20__

Lexi Hazam

Dated: _____, 20__

Christopher Seeger

Dated: _____, 20__

Previn Warren